

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

---

In the Matter of a Proceeding on Motion of the  
Commission as to the Rates, Charges, Rules and  
Regulations of SUEZ Water New York Inc. for  
Water Service.

---

Case 16-W-0130

**SUEZ WATER NEW YORK INC.'S MOTION TO STRIKE  
ALL OR PORTIONS OF THE REPLY BRIEFS FILED BY  
HARRIET D. CORNELL/THE ROCKLAND COUNTY TASK FORCE ON WATER  
RESOURCES MANAGEMENT, THE PUBLIC UTILITY LAW PROJECT,  
AND SCENIC HUDSON, INC. AND RIVERKEEPER, INC.**

Robert J. Alessi  
Jeffrey D. Kuhn  
DLA Piper LLP (US)  
677 Broadway, Suite 1205  
Albany, New York 12207-2996  
Tel: (518) 788-9710  
[robert.alessi@dlapiper.com](mailto:robert.alessi@dlapiper.com)  
[jeffrey.kuhn@dlapiper.com](mailto:jeffrey.kuhn@dlapiper.com)

John T. Dillon  
Senior Corporate Attorney – Utility Operations  
SUEZ  
461 From Road – Suite 400  
Paramus, New Jersey 07652  
Tel: (201) 767-2811  
[john.dillon@suez-na.com](mailto:john.dillon@suez-na.com)

Brian T. FitzGerald  
Gregory G. Nickson  
Cullen and Dykman LLP  
99 Washington Avenue, Suite 2020  
Albany, New York 12210  
Tel: (518) 788-9440  
[bfitzgerald@cullenanddykman.com](mailto:bfitzgerald@cullenanddykman.com)  
[gnickson@cullenanddykman.com](mailto:gnickson@cullenanddykman.com)

*Attorneys for SUEZ Water New York Inc.*

Dated: November 23, 2016

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

---

In the Matter of a Proceeding on Motion of the  
Commission as to the Rates, Charges, Rules and  
Regulations of SUEZ Water New York Inc. for  
Water Service.

---

Case 16-W-0130

**SUEZ WATER NEW YORK INC.’S MOTION TO STRIKE  
ALL OR PORTIONS OF THE REPLY BRIEFS FILED BY  
HARRIET D. CORNELL/THE ROCKLAND COUNTY TASK FORCE ON WATER  
RESOURCES MANAGEMENT, THE PUBLIC UTILITY LAW PROJECT,  
AND SCENIC HUDSON, INC. AND RIVERKEEPER, INC.**

**PRELIMINARY STATEMENT**

SUEZ Water New York Inc. (“SUEZ” or the “Company”) respectfully submits this motion to strike the entire post-hearing putative Reply Brief of Harriet D. Cornell on Behalf of the Rockland County Task Force on Water Resources Management (“Cornell Reply Brief”), and the designated portions of the Joint Reply Brief of Scenic Hudson, Inc. and Riverkeeper, Inc. (“Joint Reply Brief”) and the Reply Brief of the Public Utility Law Project (“PULP Reply Brief”), all of which were filed in this matter on November 18, 2016 (collectively, the “Intervenor Reply Briefs”).

In direct violation of Administrative Law Judge Michelle L. Phillips’s unambiguous ruling (and Commission precedent) requiring that “all arguments” be included in parties’ initial post-hearing briefs and not made for the first time in reply briefs, the Intervenor Reply Briefs each include arguments that were not put at issue in either of the initial briefs of SUEZ or the Department of Public Service Staff (“Staff”) and thus cannot be made for the first time in a reply brief.

The Cornell Reply Brief is the most egregious in ignoring ALJ Phillips's ruling on the scope and content of reply briefs. Mrs. Cornell elected not to file any initial brief on the November 10 deadline but instead chose to hold *all* of her arguments for her reply brief – thereby intentionally preventing the Company or other parties from responding to any of Mrs. Cornell's arguments. That is precisely what ALJ Phillips ruled the parties could not do. In addition, long tracts of the Cornell Reply Brief are totally devoid of record citations – in violation of another directive of the ALJ.

Furthermore, a large portion of the Cornell Reply Brief is comprised of a lengthy first-person statement by Mrs. Cornell that attempts to explain why Rockland County and the Rockland County Task Force on Water Resources Management (“Task Force”) have not enacted any mandatory water conservation ordinances or a county comprehensive water conservation plan despite promising to do so for years. Mrs. Cornell admits that this statement is being provided because she feels that “during [her] cross-examination [she] was not given an opportunity to describe many actions being taken by the Task Force.”<sup>1</sup> If Mrs. Cornell or her attorneys felt that further explanation of the inaction by the Task Force or the County was necessary, such an explanation was required to be placed in the record through re-direct examination, with an opportunity for re-cross by the Company or other parties. However, Mrs. Cornell's attorneys decided not to conduct any re-direct,<sup>2</sup> and Mrs. Cornell may not now attempt to rehabilitate her testimony through an unsworn first-person statement thinly disguised as a segment of a “reply” brief. Among other things, allowing Mrs. Cornell to submit this improper

---

<sup>1</sup> Cornell Reply Brief at 17. **NOTE:** The pages of the Cornell Reply Brief are not numbered. References to page numbers in the Cornell Reply Brief are based on designating the page with “I. INTRODUCTION/BACKGROUND” as page 1 and then numbering the pages sequentially thereafter.

<sup>2</sup> Tr. 1106:7-8.

statement into the record would deprive the Company of its fundamental right (recognized under Commission rules, Section 306(3) of the State Administrative Procedure Act (“SAPA”), and judicial precedent) to cross-examine Mrs. Cornell on the matters asserted therein.

There cannot be two sets of rules in this matter: one for Mrs. Cornell and one for every other party. Mrs. Cornell’s implicit demand that she be treated differently from everyone else by submitting the Cornell Reply Brief flouts ALJ Phillips’s rulings and undermines the fairness and basic orderliness of the process and should not be rewarded. Mrs. Cornell’s decision to not file an initial brief – especially in light of the other abject improprieties in the Cornell Reply Brief referenced above – should *ipso facto* disqualify her from asserting all of her arguments in the form of a “reply” brief, and the entire Cornell Reply Brief should be struck from the record.

Portions of the Joint Reply Brief and the PULP Reply Brief also include arguments that were not put at issue in either SUEZ’s or Staff’s initial briefs, thereby violating ALJ Phillips’s ruling requiring parties to make “all arguments” in their initial briefs and not to hold arguments for their reply briefs.

The PULP Reply Brief also improperly attempts to introduce additional evidence in the form of two newspaper articles, which violates the rule that post-hearing briefs are to be used to set forth a party’s position on the issues in the case, and not as vehicles for the last-minute attempted introduction of additional evidence.

Based on the foregoing, and those reasons more fully articulated below, the entire Cornell Reply Brief, and the portions of the Joint Reply Brief and PULP Reply Brief designated below, should be struck from the record in this proceeding.

## ARGUMENT

**I. THE ENTIRE CORNELL REPLY BRIEF SHOULD BE STRUCK FROM THE RECORD BECAUSE IT VIOLATES THE ALJ'S RULING THAT ALL ARGUMENTS WERE TO BE INCLUDED IN INITIAL BRIEFS AND NOT HELD FOR REPLY BRIEFS, AND AMOUNTS TO IMPROPER UNSWORN FIRST-PERSON TESTIMONY IN THE GUISE OF A BRIEF.**

**A. The Cornell Reply Brief Violates the ALJ's Ruling That "All Arguments" Were to Be Included in Initial Briefs and Not Held for Reply Briefs, and Improperly Includes Arguments That Were Not Put at Issue in Any Initial Briefs and Thus Cannot Be Made for the First Time in a Reply Brief**

ALJ Phillips's ruling on the permissible contents of reply briefs was clear:

All arguments that you know of and that you wish to make should be presented in your initial brief. Do not hold arguments for the reply brief.<sup>3</sup>

This ruling was consistent with general Commission precedent on the proper scope and content of reply briefs. *E.g.*, Case 91-C-1249, *In re New Telephone Co.*, Recommended Decision on Phase II, 1997 WL 33770768, \*1 n.2 (Jan. 17, 1997) (rejecting consideration of portions of a reply brief that raised "numerous new points which are quite simply too late and inappropriate at this final stage of the proceeding").

In direct violation of ALJ Phillips's ruling, Mrs. Cornell elected not to file an initial brief on the November 10 deadline but instead held *all* of her arguments for her so-called "reply" brief. On November 10, Mrs. Cornell's counsel (Thomas Simeti) filed a letter stating that she had elected "not to file an initial brief" but reserved "an opportunity to submit a reply brief to respond to the arguments of other parties within the subject headings identified in the Table of

---

<sup>3</sup> Tr. 1119:18-20. ALJ Phillips also stated that if a party violated her ruling on the proper scope and content of reply briefs, a motion would be the proper method to raise the issue. Tr. 1120:2-17.

Contents.”<sup>4</sup> However, contrary to Mr. Simeti’s letter, the vast majority of the Cornell Reply Brief is not a “reply” brief at all because it does not respond to arguments that were first put at issue in the initial briefs filed by the Company or Staff.<sup>5</sup> Rather, the arguments included in the Cornell Reply Brief could have been – and, indeed, were required to have been – asserted in an initial brief filed on November 10, not improperly withheld until a putative “reply brief” filed on November 18. Mrs. Cornell’s decision to not file an initial brief, especially in light of the other abject improprieties in the Cornell Reply Brief explained below, should *ipso facto* disqualify her from making all of her arguments in a “reply” brief because it improperly denied the Company the opportunity to respond to Mrs. Cornell’s arguments in its reply brief.

Although the Cornell Reply Brief is comprised of arguments that could have and should have been asserted in an initial brief instead of being held for submission as a reply, certain examples are particularly illustrative of the impropriety of Mrs. Cornell’s sharp tactics. Mrs. Cornell argues that the Joint Proposal (“JP”) is not reasonable or in the public interest because one of the exhibits upon which the JP’s conservation provisions are based – the “SUEZ Water New York Inc.: Water Conservation Plan” that lists Black & Veatch as an author (“B&V Report,” Hearing Exh. 34) – is allegedly “hearsay non-witness evidence” because no one from Black & Veatch was presented as a witness.<sup>6</sup> As an initial matter, there is nothing in the Company’s or Staff’s initial briefs that put this argument at issue, and Mrs. Cornell clearly could have asserted this (meritless) argument in an initial brief instead of improperly holding it for her

---

<sup>4</sup> Case 16-W-0130, DMM Filing No. 181.

<sup>5</sup> To the extent Mrs. Cornell, PULP, or the authors of the Joint Reply Brief claim that their so-called reply briefs were responding to subjects put an issue in the initial briefs filed by other opponents of the JP, such a contention should be rejected as the briefing equivalent of impermissible “friendly cross.”

<sup>6</sup> Cornell Reply Brief at 2, 3-4, 7 n.5.

reply. Mrs. Cornell's argument is also substantively devoid of merit. Donald Distanto, who was presented by the Company as a witness and was available for cross-examination,<sup>7</sup> collaborated with Black & Veatch on preparation on the B&V Report, was the overall manager of the project that resulted in the production of the B&V Report, and answered questions on cross-examination regarding the contents and preparation of the B&V Report.<sup>8</sup> Accordingly, it is not accurate to characterize the B&V Report as "hearsay non-witness evidence." Furthermore, even if the B&V Report was hearsay non-witness evidence (which it is not), Mr. Distanto could nonetheless rely on the B&V Report in his testimony in support of the JP because he is an expert in the field of water supply planning/engineering,<sup>9</sup> and it is well-established that experts are permitted to rely on hearsay in forming their opinions, so long as the material "is of a kind accepted in the profession as reliable." *State v. Floyd Y.*, 22 N.Y.3d 95, 112 (2013). Neither Mrs. Cornell nor any other intervenor has ever claimed that Mr. Distanto is not an expert in water supply planning/engineering, and none of the intervenors challenged the fact that the B&V Report was prepared in accordance with generally accepted methodologies and would thus be "accepted in the profession as reliable."<sup>10</sup> *Id.* Mrs. Cornell's assertions that the record does not support the conservation provisions of the JP should thus be rejected.

It appears that Mrs. Cornell derived the idea to improperly challenge the B&V Report once she read the Company's initial brief. Specifically, footnote 282 of SUEZ's initial brief

---

<sup>7</sup> Tr. 24:15-19.

<sup>8</sup> Hearing Exh. 34 at 111; *e.g.*, Tr. 154:6-9, 351:15-352:6, 357:12-24, 362:2-363:18.

<sup>9</sup> Mr. Distanto holds an M.S. in environmental engineering, is a registered professional engineer in New York State, has worked in the water supply industry for 30 years, has worked for the Company for 19 years, and is SUEZ's Director of Master Planning. *See* Hearing Exh. 1 (Direct Testimony of Donald F. Distanto at 2).

<sup>10</sup> Tr. 63:4-11 (noting that Black & Veatch is a world-renowned expert in conservation).

demonstrated that the portion of Mrs. Cornell's direct testimony that attempted to summarize reports that were never submitted into evidence and were prepared by non-witnesses Vickers, Appleton, and Braman has little if any probative value and should not be relied upon. But what Mrs. Cornell writes about in her putative reply is not responsive and has nothing to do with her reference to Vickers, Appleton or Braman; it is all about a completely different set of evidence and topic. Moreover, unlike the hearsay reports that Mrs. Cornell attempted to summarize in her direct testimony, the B&V Report was submitted into evidence, and Mr. Distanto (an expert witness who collaborated in preparation of the B&V Report) was made available to answer questions regarding the B&V Report on cross-examination. The two situations are thus highly distinguishable.

A review of Section I ("Introduction/Background"), Section VIII ("Non-Revenue Water"), Section XV ("Revenue Allocation and Rate Design"), and Section XVII ("Conservation and Efficiency Program") of the Cornell Reply Brief demonstrates that each of those sections are almost entirely comprised of arguments that are not responding to arguments put at issue in the Company's or Staff's initial briefs.<sup>11</sup> Rather, nearly all of the arguments in those sections could have been asserted in an initial brief filed on November 10 but, in violation of ALJ Phillips's ruling, they were improperly withheld and instead made for the first time in the Cornell Reply Brief on November 18.

Accordingly, because the Cornell Reply Brief violates ALJ Phillips's ruling regarding the proper scope and content of reply briefs, the Cornell Reply Brief should be struck in its entirety from the record.

---

<sup>11</sup> To the extent Mrs. Cornell might argue that isolated portions of the Cornell Reply Brief actually respond to arguments raised in the Company's and Staff's initial briefs, the entire Cornell Reply Brief should nonetheless be struck given the totality of the improprieties contained therein.

B. The Cornell Reply Brief is Devoid of Record Cites and Is Tantamount to Unsworn First-Person Testimony in the Guise of a Brief

ALJ Phillips clearly instructed the parties as follows with respect to basing their post-hearing briefs on the evidentiary record:

I have asked the parties to make sure than any arguments that they make are – they cite back to the record, cite to the evidentiary record where it supports those arguments, and have indicated that doing a good job at that will probably require a cite after at least every other sentence.<sup>12</sup>

These instructions notwithstanding, whole tracts of the Cornell Reply Brief – *e.g.*, pages 16-20 – do not include *any* citations to the evidentiary record. As a result, the Cornell Reply Brief is replete with glaring inaccuracies that would unnecessarily require the Company at least a dozen pages or more to correct (although SUEZ will not further burden the record by doing so). To give just a few examples: Mrs. Cornell asserts that the intervenors “do not receive any funding,”<sup>13</sup> which ignores the fact that several of the intervenors (*e.g.*, Rockland County, the Task Force, the Municipal Consortium, and the Municipal Intervenors) are represented by taxpayer-funded counsel. Mrs. Cornell also urges the Commission to approve the “initial/temporary boost to T&D main replacement rate to 1.5%... as recommended by the intervenor expert, Aiqueous, represented by Jonathan Kleinman,”<sup>14</sup> while ignoring that Mr. Kleinman withdrew that recommendation from his report and testimony during his cross-examination.<sup>15</sup> The only support provided for Mrs. Cornell’s assertion that the B&V Report demonstrates that “many leading jurisdictions employ more advanced conservation measures”

---

<sup>12</sup> Tr. 1119:10-15.

<sup>13</sup> Cornell Reply Brief at 1.

<sup>14</sup> Cornell Reply Brief at 6-7.

<sup>15</sup> Tr. 1325:21-1327:4, 1344:7-10.

than those included in the JP is footnote 38, but footnote 38 merely refers back to itself by stating: “*See Footnote 38 in present document.*”

Another striking and egregious example of the Cornell Reply Brief’s failure to adhere to the record is Section XVII.F, entitled “Government Action,” which is four pages long but does not contain a single citation to the evidentiary record.<sup>16</sup> One of the reasons for this failure is that this section of the Cornell Reply Brief is not a legal argument at all, but is instead a lengthy and unsworn first-person statement by Mrs. Cornell that attempts to explain the inaction of Rockland County and the Task Force with respect to enactment of mandatory water conservation ordinances or creation of a comprehensive water conservation plan.<sup>17</sup> Mrs. Cornell expressly concedes that this statement is being provided because she feels that “during [her] cross-examination [she] was not given an opportunity to describe many actions being taken by the Task Force.”<sup>18</sup> However, the record debunks Mrs. Cornell’s claim that she was not given an opportunity to describe actions taken by the Task Force or the County during the evidentiary hearing. The Company’s attorney, Robert Alessi, was extremely respectful, accommodating, and gracious to Mrs. Cornell throughout her cross-examination.<sup>19</sup> Likewise, the ALJ repeatedly permitted Mrs. Cornell to speak at length during her cross-examination, even when her answers were not responsive to the question asked.<sup>20</sup> This record reality underscores the complete

---

<sup>16</sup> Cornell Reply Brief at 16-20.

<sup>17</sup> In addition to containing an unsworn first-person statement, the Cornell Reply Brief also violates 16 NYCRR § 3.5(b)(6), which requires that every document filed with the Commission “be signed by or on behalf of, the submitting party.” The Cornell Reply Brief was filed without being signed by Mrs. Cornell or anyone else.

<sup>18</sup> Cornell Reply Brief at 17.

<sup>19</sup> *E.g.*, Tr. 994-995.

<sup>20</sup> *E.g.*, Tr. 1015:22-1016:11, 1063:20-1064:18, 1097:3-19, 1103:2-24.

inaccuracy of Mrs. Cornell's belated contention that she was not provided a fair opportunity to explain the actions of the County and the Task Force during the evidentiary hearing.

If Mrs. Cornell or her attorneys felt that further explanation of the inaction by the Task Force or Rockland County was necessary, the mechanism to place such an explanation in the evidentiary record was re-direct examination. Of course, had she done so, the Company, subject to the ALJ presiding, would have performed a robust re-cross of Mrs. Cornell and readily demonstrated the inaccuracy of her assertions. However, Mrs. Cornell and her attorneys decided not to conduct any re-direct.<sup>21</sup> Having made that tactical decision to shield Mrs. Cornell from further cross-examination, it is entirely impermissible for Mrs. Cornell and her attorneys to now attempt to rehabilitate her testimony through an unsworn first-person statement thinly disguised as a segment of a "reply" brief.

It is of course axiomatic that "exhibits and testimony are vehicles for submitting evidence," whereas briefs cannot be used to submit evidence but are instead "for the purpose of identifying and setting forth a party's position on the issues in the case." Case 00-M-0504, *In re Provider of Last Resort Responsibilities*, Ruling on Motion to Strike at 4 (Oct. 7, 2002). It is also well-established that the Company, like every party to a Commission evidentiary hearing, has a right to cross-examine witnesses on the subjects of their testimony. SAPA § 306(3); 16 NYCRR § 4.5(a); *Seeger v. Moduform, Inc.*, 146 A.D.2d 922, 922 (3d Dep't 1989) ("Regardless of the merits in a particular case, a party whose rights are being determined in a quasi-judicial administrative hearing must be given the opportunity to cross-examine witnesses.").

Here, allowing Mrs. Cornell to make her unsworn and otherwise wholly inappropriate statement in Section XVII.F of the Cornell Reply Brief would violate the rule that briefs are not

---

<sup>21</sup> Tr. 1106:7-8.

to be used as vehicles to submit evidence. *See* Case 00-M-0504, Ruling on Motion to Strike at 4. More importantly, however, permitting Mrs. Cornell's statement into the record after the close of the evidentiary hearing would deprive the Company of its fundamental right to cross-examine Mrs. Cornell on the matters asserted therein. *See* SAPA § 306(3); 16 NYCRR § 4.5(a); *Seeger*, 146 A.D.2d at 922.

Accordingly, on these additional bases the Cornell Reply Brief should be struck from the record in its entirety.

**II. THE DESIGNATED PORTIONS OF THE PULP REPLY BRIEF SHOULD BE STRUCK FROM THE RECORD BECAUSE THEY VIOLATE THE ALJ'S RULING THAT ALL ARGUMENTS WERE TO BE INCLUDED IN INITIAL BRIEFS AND NOT HELD FOR REPLY BRIEFS, AND ALSO ATTEMPT TO INTRODUCE ADDITIONAL DOCUMENTS INTO THE RECORD WELL AFTER THE CLOSE OF THE EVIDENTIARY HEARING.**

The PULP Reply Brief also violated ALJ Phillips's ruling that required parties to make "all arguments" in their initial briefs and not to hold arguments for their reply briefs.<sup>22</sup> Starting on page 6, the PULP Reply Brief argues that the JP and Staff's brief "suggest a return to the *laissez-faire* approach the PSC previously applied to the regulation of water utilities." As evidence for this "*laissez-faire* approach," PULP cites a lengthy segment of testimony given in Case 13-W-0246 (the Surcharge Case) by John Stewart, a former Director of Accounting and Finance at the Department of Public Service and Senior Technical and Policy Advisor to the Chairman of the Commission.<sup>23</sup> PULP then attempts to contrast this alleged "*laissez-faire* approach" with a statement given by the current Commission Chair Audrey Zibelman.<sup>24</sup> While the Company will forego addressing the substance of PULP's tangential and gratuitous criticism

---

<sup>22</sup> *See* Tr. 1149:18-20.

<sup>23</sup> PULP Reply Brief at 6-7.

<sup>24</sup> PULP Reply Brief at 7-8.

of Mr. Stewart, this scorched-earth argument is just another example of PULP's insult to the process. It is clear that nothing in PULP's argument responds to anything that was put at issue in the Company's or Staff's initial briefs, and PULP's argument clearly could have been included in its initial brief.<sup>25</sup> Accordingly, PULP improperly held this argument for its reply brief and, pursuant to ALJ Phillips's ruling and Commission precedent, it should be struck.

PULP also attaches two newspaper articles to its reply brief (as Appendix 1), and thus attempts to use its reply brief to introduce additional documents into the record well after the close of the evidentiary hearing. As noted above, it is well-established that post-hearing briefs are to be used to set forth a party's position on the issues in the case, and not as vehicles to attempt the last-minute introduction of additional evidence. *See* Case 00-M-0504, Ruling on Motion to Strike at 4. Accordingly, the two newspaper articles attached to the PULP Reply Brief as Appendix 1 should be struck from the record in this proceeding.

---

<sup>25</sup> In light of PULP's wrong and uncalled-for personal criticism of Mr. Stewart, it must be noted that one of the signatories of the PULP Reply Brief, Saul Rigberg, was also the individual who signed the 2006 Joint Proposal on behalf of Staff, and it was that 2006 Joint Proposal that required the Company to develop the HWSP under risk of financial penalties. *See* Cases 06-W-0131 and 06-W-0244, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Inc. and United Water South County for Water Service*, Order Approving Merger and Adopting Three-Year Plan (Dec. 14, 2006). It is unfortunate that Mr. Rigberg goes on his gratuitous tangent given his historic involvement and causative role in the HWSP. On October 13, 2006, Mr. Rigberg signed and submitted a Statement in Support of the 2006 Joint Proposal on behalf of Staff in Cases 06-W-0131 and 06-W-0244 (DMM Filing No. 63), which stated as follows (at 1, 7):

Another critical issue was the lack of an apparent plan, in the eyes of each of the intervenors, on the part of [the Company] to develop a long-term source of new water supply.... The parties insisted that the company commit itself to developing a long-term project. After much discussion, it was agreed the company would propose, by January 15, 2007 in a filing to the Commission, its plan for development of such a project.

Notwithstanding Mr. Rigberg's central role in the creation of the regulatory mandate that required the Company to develop the HWSP, Mr. Rigberg and PULP have impermissibly attempted to re-litigate in this proceeding the Company's ability to recover the costs it prudently-incurred to develop the HWSP as required by the 2006 Joint Proposal that Mr. Rigberg so forcefully pursued and signed. *See, e.g.*, PULP Initial Brief at 17.

Based on the foregoing, the following portions of the PULP Reply Brief should be struck: (1) the text starting at the first full paragraph on page 6 (beginning with the words “PULP explained in its initial brief...” and including all text until subheading B on page 8 (ending with the words “...is not in the public interest.”); and (2) the two newspaper articles attached as Appendix 1.

**III. THE DESIGNATED PORTION OF THE JOINT REPLY BRIEF SHOULD BE STRUCK FROM THE RECORD BECAUSE IT VIOLATES THE ALJ’S RULING THAT ALL ARGUMENTS WERE TO BE INCLUDED IN INITIAL BRIEFS AND NOT HELD FOR REPLY BRIEFS.**

The Joint Reply Brief also violated ALJ Phillips’s ruling that required parties to make “all arguments” in their initial briefs and not to hold arguments for their reply briefs.<sup>26</sup> The first paragraph of Section II.E.1 on page 9 of the Joint Reply Brief argues that the record in support of the JP is not complete because the Company did not submit the testimony of or make available for cross-examination any “conservation experts” – *i.e.*, employees of CDM Smith, AKRF, Black & Veatch, or HALCROW Engineering, or Company employee Nick Curcio, who authored the 2015 NRW Report (Hearing Exh. 59). Nothing in this line of argument responds to anything that was first put at issue in the Company’s or Staff’s initial briefs, and this argument clearly could have been included in the initial Joint Brief. Accordingly, the authors of the Joint Reply Brief improperly held this argument for their reply and, pursuant to ALJ Phillips’s ruling, it should be struck. In addition, from a substantive standpoint, this argument lacks merit for the same reasons articulated in Section I.A, *supra*, with respect to Mrs. Cornell’s arguments regarding the B&V Report. Mr. Distant, an expert in the field of water supply planning/engineering (including conservation measures) and the Company’s Director of Master

---

<sup>26</sup> See Tr. 1119:18-20.

Planning, was made available for cross-examination concerning, *inter alia*, the B&V Report, the June 2015 Feasibility Study, or the 2015 NRW Report, and how the information in those reports related to and supported the conservation provisions of the JP.<sup>27</sup> There is thus no merit to the assertion in the Joint Reply Brief that the record in support of the conservation provisions of the JP is incomplete.

Accordingly, the following portion of the Joint Reply Brief should be struck: the second full paragraph on page 9 (beginning with the words “Suez claims that...” and ending with the words “...greatest possible water savings.”).

---

<sup>27</sup> Tr. 24:15-19.

## **CONCLUSION**

Based on the foregoing, the entire Cornell Reply Brief, and the portions of the Joint Reply Brief and PULP Reply Brief designated above, should be struck from the record in this proceeding.

Dated: November 23, 2016

Respectfully submitted,



---

Robert J. Alessi  
Jeffrey D. Kuhn  
DLA Piper LLP (US)  
677 Broadway, Suite 1205  
Albany, New York 12207-2996  
Tel: (518) 788-9710  
[Robert.Alessi@dlapiper.com](mailto:Robert.Alessi@dlapiper.com)  
[Jeffrey.Kuhn@dlapiper.com](mailto:Jeffrey.Kuhn@dlapiper.com)

Brian T. FitzGerald  
Gregory G. Nickson  
Cullen and Dykman LLP  
99 Washington Avenue, Suite 2020  
Albany, New York 12210  
Tel: (518) 788-9440  
[bfitzgerald@cullenanddykman.com](mailto:bfitzgerald@cullenanddykman.com)  
[gnickson@cullenanddykman.com](mailto:gnickson@cullenanddykman.com)

John T. Dillon  
Senior Corporate Attorney – Utility Operations  
SUEZ  
461 From Road – Suite 400  
Paramus, New Jersey 07652  
Tel: (201) 767-2811  
[john.dillon@suez-na.com](mailto:john.dillon@suez-na.com)

*Attorneys for SUEZ Water New York Inc.*