

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Verified Petition of United Water  
New York Inc. for Implementation of a Long-Term  
Water Supply Surcharge, And Related Tariff  
Amendment.**

**Case 13-W-0246  
(Matter #13-01259)  
Honorable Kevin Jaye Casutto,  
Administrative Law Judge  
(the "Surcharge Case")**

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**Proceeding on Motion of the Commission as to the  
Rates, Charges, Rules and Regulations of United  
Water New York Inc. for Water Service.**

**Case 13-W-0295  
(Matter #13-01437)  
Honorable Rafael A. Epstein  
and Honorable David R. Van Ort,  
Administrative Law Judges  
(the "Rate Case")**

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**Proceeding on Motion of the Commission to Examine  
United Water New York[] Inc.'s Development of a New  
Long-Term Water Supply Source.**

**Case 13-W-0303  
(Matter #13-01489)  
Honorable Kevin Jaye Casutto,  
Administrative Law Judge  
(the "Need Case")**

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**NOTICE OF MOTION  
TO CONSOLIDATE THREE (3) CASES, INTO ONE (1) CASE**

**Dated: March 7, 2014**

**ORAL ARGUMENT REQUESTED**

**PLEASE TAKE NOTICE** that upon the annexed "Motion To Consolidate Three (3) Cases, Into One (1) Case", its Exhibits "A" and "B", and upon the Prior Proceedings in each of the three (3) above-captioned actions, the undersigned will move this Honorable New York State Public Service Commission/New York State Department of Public Service, in the State of New York, County of Albany, at Empire State Plaza, Agency Building 3, Albany, New York, on March 7, 2014, at 9:30 a.m. of that day, or as soon thereafter as counsel can be heard, for an order pursuant to 16 NYCRR §3.6, CPLR §602(a), CPLR§2004, CPLR §3211(a)(4), New York State Judiciary Law §2-B, N.Y. State Administrative Procedure Law §§100, 302, & 304, and the case law and administrative law decided thereunder, for an order pursuant to 16 NYCRR §3.6, CPLR §602(a), CPLR§2004, CPLR §3211(a)(4), and N.Y. State Administrative Procedure Law §§100, 302, & 304 unconditionally consolidating the above-entitled three (3) Cases into one (1) Case, and for such further relief as this Honorable New York State Public Service Commission deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to the applicable administrative rules and regulations of this Honorable New York State Public Service Commission ("PSC"), including without limitation 16 NYCRR §3.6, answering materials must be served upon the New York State Public Service Commission, served upon the undersigned, and served upon all other Parties, and thereupon posted to the PSC's Internet Website, within eight (8) days following the date of service of this Motion, plus one (1)

additional day pursuant to 16 NYCRR §3.5(f) due to the electronic service of this Motion - or a total of nine (9) days following the date of service of this Motion.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to 16 NYCRR §3.8 ("Oral [A]rgument [B]efore [T]he Commission"), the undersigned will move and hereby does move this Honorable New York State Public Service Commission/New York State Department of Public Service for oral argument on this Motion To Consolidate, on the basis that this proceeding is an "unusual case[]" where the issues are not adequately [yet] developed in testimony and written pleadings" as per 16 NYCRR §3.8(a), as well as the provisions of 16 NYCRR §3.8(d) which provide for oral argument before this proceeding's [P]residing [O]fficer.

Dated: March 7, 2014  
Pearl River, New York

By:



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**MOTION TO CONSOLIDATE THREE (3) CASES, INTO ONE (1) CASE**

**Dated: March 7, 2014**

**ORAL ARGUMENT REQUESTED**

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**Motion To Consolidate**, 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 Proceeding.

Addressed To: Honorable Kevin Jaye Casutto, Administrative Law Judge & Presiding Officer.  
Nature Of Relief Requested: Consolidation Of Three (3) Cases.  
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. As confirmed in the Thursday, February 20, 2014 Procedural Conference ("February 20 Conference") in Albany, New York before Your Honor and other parties to this proceeding ("Parties"; or in the singular hereafter as the context may require, "Party"), and over the limited objection by United Water ("UW") thereto, I am an Intervenor-Party to this Surcharge Case. I am also an Intervenor-Party in the above-referenced, separately-referenced Rate Case and Need Case.

2. **The Motion.** Over the limited opposition initially expressed by United Water in the February 20 Conference, and pursuant to 16 NYCRR §3.6 (2014; *as of February 21, 2014, f/k/a Section 12.13[h]*) (New York Codes, Rules and Regulations, Title 16; Department Of Public Service, Chapter I; Rules Of Procedure, Subchapter A; General, Part 3; Procedures Applicable To All Proceedings, "Motion [P]ractice"), I hereby move to consolidate this **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")** with the following two (2) other Cases, each of which are clearly, at minimum, both "Related Cases" and also "Related Matters" with respect to the instant 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. **Additional Relief.** Included in this Motion To Consolidate is a request for an order whereby Your Honor directs those individuals programming and maintaining the PSC Website to first immediately electronically link these three (3) subject Cases as "Related Cases" and "Related Matters" as their currently-respective electronic docket sheets provide for and allow, followed by a full commingling of all electronic and other filings in the three (3) Cases consolidated within the body of one (1) single Case and one (1) single electronic docket sheet. I urge Your Honor and this Honorable Public Service Commission to please summarily end the further and deliberate "pancaked" litigation of these Cases, pursued by United Water in piecemeal fashion.

4. **Addressee.** The Commission's regulations require that motions be addressed to the [P]residing [O]fficer. To the extent that any portion of the relief requested herein is beyond Your Honor's jurisdiction or control, then this Motion To Consolidate is directed to the Secretary of the Commission.

#### **CONSOLIDATED EDISON, CONSOLIDATION PRECEDENT**

5. **Recent Past PSC Precedent.** It is within this Commission's jurisdiction to consolidate cases. There is relatively-recent past precedent for this Commission consolidating cases and issues in at least certain respects. *See* "Notice Of Consolidation Of Issue", Case 09-S-0029 (*Matter #09-00029*) (Proceeding on Motion to the Commission to Consider Steam Resource Plan and East River Repowering Project [ERRP] Cost Allocation Study, and Steam Energy Efficiency Programs for Consolidated Edison Company of New York, Inc. - "Steam Planning Case"), and Case 09-S-0794 (*Matter #09-02199*) (Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service - "Steam Rate Case") (collectively, the "Con Ed Steam Cases"). In The Con Ed Steam Cases, this Commission addressed the proper forum for considering a major project's cost allocation between steam and electric customers. A Con Ed "Steam Planning" Case had been followed by a Con Ed "Steam Rate" Case, both initiated in 2009. Therefore, in this respect, the Con Ed procedural fact-pattern was at least roughly analogous to the interrelationship between the United Water Need Case on the one hand, and the United Water Surcharge and Rate Cases on the other hand: that is, "project - planning - rate". In a conference the utility itself argued, in Con Ed:

... that the record being developed in the Steam Planning Case related to allocation of [the project's] costs between its electric and steam systems not be duplicated in the Steam Rate Case; and that potential settlement discussions in the Steam Rate Case may be more productive if the issue of [the project's] costs is included... **[The utility maintained that the project's] "cost allocation question is important to determination of just and reasonable rates in the Steam**

**Rate Case, and that consolidation of the issue as proposed will avoid duplication of effort and facilitate potential settlement of the rate case".** Case [09-S-0794 [and Case 09-S-0029] - Consolidated Edison Company of New York, Inc. - Steam Rates, Notice Of Consolidation Of Issue (issued January 6, 2012), p.2. [Emphasis supplied].

In other words, in Con Ed, the utility recommended that the Steam Planning case be consolidated with the Steam Rate case to avoid duplication of efforts between the proceedings and allow common issues, such as the project's cost allocation issue, to be decided as part of the Steam Rate case (as re-stated in "Motion To Consolidate" of The City Of New York, March 22, 2013, [Case 09-S-0029, Case 09-S-0794, and Case 13-S-0032], *citing* "Case 09-S-0794, Pre-Filed Direct Testimony of Saumil Shukla at 24-25").

6. **Aside.** (As a personal aside, it is by no means a simple matter to electronically-search for the word-concept "consolidated", within "Consolidated Edison"-related PSC case law).

7. **Consolidation In The Consolidated Edison Steam Cases.** Without objection by the Con Ed proceeding parties, the Commission determined that "on the recommendation of the judges and in the interest of overall efficiency and economy in the administration of [the] proceedings, the issue of [the project's] cost allocation will be treated in [the] proceedings in accordance with the Company's proposal and consensus of the parties. The Commission ordered, *inter alia*, that: (A) the evidentiary record developed on the project's cost allocation and related issues be made part of the evidentiary record in the Steam Rate Case, (B) that the project cost allocation issue be briefed and decided in the Steam Rate Case as opposed to the Steam Planning Case, and (C) that the Judges rule on "[a]ny scheduling or re-scheduling" relating thereto. Consolidated Edison Company of New York, Inc. - Steam Rates, Notice Of Consolidation Of Issue (issued January 6, 2012), p.3. (Case 09-S-0794 and 09-S-0029). United Water will undoubtedly seek to "distinguish" the Con Ed case on the basis that, in this Surcharge Case, the utility opposes Consolidation, whereas Con Ed requested it. Yet that's my point in bringing this Motion. The PSC should not simply do what the public utility tells the PSC to do. The PSC is a "Public" Service Commission and should not simply act at the utility's beck and call. The PSC should Consolidate these three (3) instant Cases for the people of Rockland County, New York.

8. **The Commission's Later Account Of The Con Ed Consolidation.** PSC Staff's later explanation of the above-described Con Ed procedural technique, was that "The Commission consolidated Cases 09-S-0029 (the Steam Planning proceeding) and Case 09-S-0794 (the Steam Rate Case) for decision, but the records remain distinct". *See* "DPS Staff Brief Opposing Motion To Consolidate By The City Of New York", April 9, 2013, (Case 09-S-0029, Case 09-S-0794, and Case 13-S-0032 [Matter #13-00200]);

*citing as Case []09-S-0794 - Consolidated Edison Company of New York, Inc. - Steam Rates, Notice Of Consolidation Of Issue (issued January 6, 2012), p.2 (see Case 09-S-0794 and 09-S-0029). The following month thereafter PSC observed, "The last Con Edison steam rate case was consolidated for briefing and decision with the consideration, in the steam planning case, of fuel cost allocation for [the project]." Order dated May 20, 2013, p.2 (Case 09-S-0029, Case 09-S-0794, and Case 13-S-0032), in which PSC denied as moot a subsequent consolidation request because, by that point in time, "nothing remain[ed] to be consolidated with the pending steam rate case"; *supra*, p.12.*

9. **Other PSC Consolidations Of Cases - Niagara Mohawk.** Diligent review of the PSC Website yielded some other proceedings wherein the PSC consolidated Cases. Of interest is "Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Gas Service" (Case 95-G-1095 [*Matter #95-01095*]), 95-G-0091 [*Matter #95-00091*]), and a Procedural Ruling Issued January 26, 1996 therein. Judge Joel A. Linsider granted a staff motion *sans* objection for consolidation of a utility's "Section 107" petition for grant funds for customers using gas-fired equipment, with a rate case filed thereafter in the same year by the same utility. Consolidation provided "for joint consideration, on a common record, of the issues raised by the two cases". Judge Linsider observed that "Staff regards the general rate case as a suitable forum for considering the §107 application and examining the proposed use of the funds and the company's ability to absorb their loss if the contemplated investment fails", determining that "the §107 case will become part of the rate case".

10. **Other PSC Consolidations Of Cases - NYSEG.** In "Proceeding on Motion of the Commission to Consider a Revenue Decoupling Mechanism for New York State Electric & Gas Corporation" (Case 07-M-0906 [*Matter #07-00906*], 07-M-0996 [*Matter #07-00996*]), in a Notice Consolidating Proceedings Issued October 22, 2007, PSC consolidated a case examining a revenue decoupling mechanism (RDM) for a utility's electric and gas sales, into another case (over which Honorable Judge Rafael A. Epstein presided) filed earlier that year in connection with a corporate acquisition of that same utility - and simultaneously therewith ordered the closing of the RDM case.

11. **Other PSC Consolidations Of Cases - 48th Street Owners.** For future reference, "In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR in Relation to Complaint Procedures -- Appeal by 48th Street Owners Corp. of the Informal Decision Rendered in: E774700, in Favor of Consolidated Edison Company of New York, Inc., filed in C 26358", a "Commission Determination Issued and Effective September 6, 2000" therein describes four (4) cases

consolidated for appeal "because all concern the same issue and utility", dwelling-owners seeking re-billing at a residential rate. Case 99-E-0274 (*Matter #99-00274*), 99-E-0275 (*Matter #99-00275*), 99-E-0279 (*Matter #99-00279*), 99-E-1358 (*Matter #99-01358*). *See also, e.g.,* Case 10-G-0527 (*Matter #10-02373*), *et al.*: regarding consolidation of 22 Cases for "consistent and efficient review" on appeal.

## **BACKGROUND AND PROCEDURAL HISTORY OF THE UNITED WATER CASES**

12. **The Past Proceedings.** This Motion To Consolidate is noticed to all Parties, many of whom, along with Your Honor, are intimately familiar with the past procedural history of this United Water Surcharge Case. However, given the recent addition of new Parties, and given my expectation that this Motion To Consolidate itself will be read and reviewed by United Water customers, rate-payers, and many others that are members of the general public and not necessarily attorneys, I provide Internet hyperlinks below to those portions of the Internet website ("PSC Website"; [www.dps.ny.gov](http://www.dps.ny.gov)) of this Honorable New York State Public Service Commission/New York State Department of Public Service ("PSC") which reflect the past proceedings and other events ("Past Proceedings") in this United Water Surcharge Case.

13. **Citations Hereinbelow.** Every effort has been made to cite statutes and case law thoroughly and accurately herein. Mindful of the fact that Albany County, New York is in the Third (3rd) Judicial Department and Rockland County, New York is in the Second (2nd) Judicial Department, this fact may in turn ultimately affect whether or not a given cited precedent is controlling, or merely instructive and guiding:

<https://www.nycourts.gov/courts/appellatedivisions.shtml>

With some citations hereinbelow, proverbial artistic license has been taken with Blue Book citation requirements - for example, providing an Internet hyperlink and Uniform Resource Locator (URL) to an uncorrected, non-print-published New York State Supreme Court opinion as illustrative on the topic of consolidation, or providing additional LEXIS cross-references when available. *See generally:*

<https://www.legalbluebook.com/>

That's intentional. I intend to forward a copy of this Motion, not simply to the PSC, Your Honor, and the Parties, but also to neighbors and other Rockland County, New York citizens who may not have access to certain resources otherwise, at least not as a practical matter. Most non-lawyer citizens have at least some difficulty locating the law - which is in fact one reason why this Motion To Consolidate is so important to Rocklanders. When the three (3) above-referenced Cases are Consolidated, Your Honor and this PSC will have made it far easier for Rocklanders to find the law, which in turn will ensure greater public

participation in the administrative and regulatory processes and a fair and just outcome. Yet the PSC won't have fairness and justice with the current and continued UW-"pancaking" of these three (3) Cases. The PSC won't have fairness and justice if these three (3) Cases continue to be adjudicated piecemeal.

14. **I Represent Myself**. Although previously stated in this Surcharge Case in my Request For Party Status, in the February 19, 2014 Conference Call, and in the February 20, 2014 Procedural Conference before Your Honor thereafter, I represent myself in this action. I represent no party. References herein to "we", "our", or "Rocklanders", for example, are neither affected examples of a Royal "we", nor are they indications of representation. They are simply indicative of the fact that I am seeking the same consolidated dispensation of justice which many of my Rockland County neighbors also seek, or will be seeking. True, I may not represent them in this action. However, I do communicate with a number of them regularly. They are following these proceedings. For all of us, it's business, and not fun; *cf.* "Rosalita (Come Out Tonight)", Bruce Springsteen (from the album "*The Wild, the Innocent & the E Street Shuffle*", 1973).

15. **Exhibits: Past Proceedings, And Controlling Law, Incorporated By Reference**. For the purposes of this Motion To Consolidate and in the interests of efficiency and economy, I incorporate herein by reference and annex hereto as a collective Exhibit "A" to this Motion To Consolidate, the Past Proceedings. Copies of the cases, statutes, and other matter cited herein are incorporated herein by this reference and annexed hereto as a collective Exhibit "B" to this Motion To Consolidate.

16. **The Past Proceedings**. The Past Proceedings speak for themselves and are identified and located as follows:

A. **This "Surcharge Case"**. 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. Honorable Kevin Jay Casutto, Administrative Law Judge.

Filed Documents, Public Comments, Party List, And Calendar:

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=13-W-0246&submit=Search+by+Case+Number>

B. **The "Rate 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. Honorable Rafael A. Epstein and Honorable David R. Van Ort, Administrative Law Judges.

Filed Documents, Public Comments, Party List, And Calendar:

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=13-W-0295&submit=Search+by+Case+Number>

C. **The "Need Case"**. 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. Honorable Kevin Jaye Casutto, Administrative Law Judge.

Filed Documents, Public Comments, Party List, And Calendar:

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=13-W-0303&submit=Search+by+Case+Number>

17. **The Mandate Of The PSC**. According to the PSC Internet website ("PSC Website"), the charge, mandate, and obligation of this Honorable Public Service Commission is to "ensur[e] Safe, Reliable Service and Just, Reasonable Rates":

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/B428BB2B680CD9B485257687006F3890?OpenDocument>  
That above-cited PSC credo, *verbatim*, is exactly what both my Rockland County, New York neighbors and I seek in our opposition to United Water's concerted pattern of activities designed to make themselves maximum profit at our expense, of which United Water's surcharge request in this Surcharge Case is but one of several intimately-correlated examples. That above-cited PSC credo, *verbatim*, is exactly what I seek in bringing this Motion To Consolidate, too.

18. **United Water Itself Is "Pursuing The Power Of A Single Action"**. Sure, in Rockland County, New York, we the rate-paying United Water customers may be getting hit with three (3) different punches in sequence. But those three (3) punches are clearly but one (1) painfully-protracted consolidated assault on us by the same Rockland-distrusted and Rockland-disliked utility named United Water. United Water has but one (1) strategy, Judge. United Water does not have three (3) strategies. Why? Because when United Water does the math and adds together in their own heads a US\$56.8+ million Surcharge plus an unneeded US\$189+ million desalination plant plus a 29% (or 25%) major rate increase, they know that they will be rich enough at our expense by dint of their one (1) unitary UW strategy alone. In this respect United Water themselves have no problem consolidating three (3) attacks into one (1) protracted assault. It's only before Your Honor and the PSC that United Water feigns to have three (3) different claims, three (3) different causes of action, three (3) different prayers for relief - for United Water's strategic reasons alone. It's apparently known as "pancaking" by Capital District insiders. The PSC should actually resent United Water wasting PSC's time by pancaking. I know that United Water has wasted mine thereby.

### COMMONALITIES BETWEEN THE THREE (3) CASES

19. All United Water Requests Are Part Of The Same Pattern From The Same Source. United Water does not make random requests for our Rockland County money, Your Honor. The requests are organized, vetted by layers of counsel, and procedurally-propagated by United Water in a manner calculated to inflict maximum economic damage on its Rockland County rate-paying customers. Aside from United Water's request to this PSC of an approximate US\$56,800,000 surcharge in this Surcharge Case, United Water also seeks an overall major rate increase of Twenty-Nine Percent (29%) (or Twenty-Five Percent [25%]) in the Rate Case. As another *de facto* request, United Water seeks justification and PSC approval of an approximate US\$189,000,000 proposed Hudson River desalination plant, in the "Need" Case. The US\$56,800,000 requested Surcharge is (thusfar, anyway) included within, and is intended to be a component part of, the requested US\$189,000,000 for the United Water proposed Hudson River desalination plant that virtually nobody in Rockland County actually wants. Therefore, United Water could never straight-facedly argue to this tribunal that the Surcharge Case is not embedded within the Need Case, when the US\$56,800,000 claimed Surcharge is a mathematical sub-set of the US\$189,000,000 worth of claimed "Need". Of course United Water can try to proffer differences between the three (3) UW requests. However:

- A. Each of the three (3) above items are, in essence, requests.
- B. Each of the three (3) are, in essence, requests made to the PSC.
- C. Each of the three (3) are, in essence, requests on which PSC must opine, by operation of law.
- D. Each of the three (3) constitute requests that if granted will further drain the wallets, bank accounts, and other resources of Rocklanders.
- E. Each of the three (3) generate administrative processes.
- F. Each of the three (3) generate administrative processes determined in Albany.
- G. Each of the three (3) generate administrative processes determined in Albany in which due process, notice, and opportunity for the public to be heard, play a most significant role.
- H. Each of the three (3) require the involvement of a judge.
- I. Each of the three (3) will result in a decision that will affect our lives and those of future generations here in Rockland County.



J. Each of the three (3) work together as one United Water hydromercantile pattern of activity calculated to deprive us Rocklanders of even more money than we have already overpaid to our water company thusfar.

K. Each of the three (3) are now subject to this Motion To Consolidate, and to make sure of that I am filing this Motion To Consolidate in all three (3) Cases.

20. **The List Of Commonalities Between The Three (3) Cases.** The foregoing list reflects conceptual commonalities between the three (3) Cases. (Paragraphs 65 through 68 hereinbelow, on the other hand, address procedural similarities between the three [3] Cases). The fact that a faceless amalgam of software and hardware known as the PSC Website spit-out a different non-"Related" Case Number for each of the three (3) Cases upon their respective initiations simply means, as I say (only) to that PSC very-inanimate robotic computer server, and in the incomparable 1993 words of my intellectual and political inspiration former New York State Governor Mario Cuomo when admonishing members of the New York State Legislature - "Monkeys can do that":

<http://alb.merlinone.net/mweb/wmsql.wm.request?oneimage&imageid=5667625>

So too can unthinking machines do that, apparently. The assignment of three (3) Case Numbers was an inhuman digital event of lesser significance than even a human button-push would have been, each of the three (3) times that the proverbial database robot spit out the Case number. Therein lies the rub. It instead takes thought, care, justice, and fairness, of people, not machines, to program the database and PSC Website to consolidate the three (3) Cases into one omnibus action - or at least to program the PSC Website to do so the next time a public utility launches a three-punch protracted and consolidated assault on an otherwise-disenfranchised and resource-challenged community of 300,000+ citizens. The faceless blinking-cursor machine never thought of my above conceptual-commonality list, my below procedural-commonality list, or concerns about efficiency and justice, when "assigning" the three (3) Case Numbers. Hence this motion. This is a motion for a sorely-needed manual override.

21. **The Parties.** One may look to the List of Parties on the PSC Website corresponding to the three (3) Cases: that is, the Surcharge Case, the Rate Case, and the Need Case. As of this writing, there are **twenty-nine (29)** Parties to the Surcharge Case, **ten (10)** [p]arties to the Rate Case, and **twelve (12)** [p]arties to the Need Case. To date, four (4) of us individuals are common [p]arties to all three (3) cases - Mr. Collar, Mr. Duthie, Mr. Rigberg, and me. Moreover, United Water, Rockland County in some form, and the New York State Department of State, all can be characterized as having their interests represented by the Parties in each of the three (3) Cases. Of course the PSC itself is intimately involved

as either a Party or otherwise in each Case, too. Yet the task of identifying the parties in this Surcharge Case is evocative of that moment in the Year 2000 complex federal election litigation before the Florida court system, wherein a Florida judge indicated on camera on international television, to paraphrase, "[Let's just] call this case 'Bush v. Gore' ". *See generally*, 531 U.S. 1060, 121 S. Ct. 674, 148 L. Ed. 2d 575, 2000 U.S. LEXIS 8427 (2000). Indeed, even the United States Supreme Court seems to prefer simple and easy-to-understand case captions, sometimes. Indeed, here, let's just call this case "The People Of Rockland County v. United Water". All the other Parties in each of the three (3) Cases are the foreseeable extensions of the two (2) core litigant groups as well as the governmental processors needed to determine the dispute between the two. The PSC might as well now give the case a simple, common-sense caption. Notwithstanding Honorable Judge Linsider's 1996 determination otherwise in Niagara Mohawk, *supra*, I'd give our Consolidated Case but one file number. Make things easy. Obvious.

### **THE ROLE OF THIS PUBLIC SERVICE COMMISSION**

22. **"Public"**. Other members of the Rockland County, New York community and I have often observed and remarked upon the use of the word "Public" in the phrase "Public Service Commission". Sure, the PSC regulates utilities. Hence, in that sense, PSC is the Commission "on" public service utilities. But the PSC is also a Commission that is required to serve the public, does serve the public, and therefore protects the public - including the Rockland County, New York public. After all, it is New York State taxpayer money that pays the salaries and benefits of PSC personnel and, *sans* conflict, even that of the Honorable Judges in PSC's Office Of Hearings And Alternative Dispute Resolution. As such, the PSC, and those that comprise and constitute PSC, are truly beholden to the public and to serve the public, in multiple senses of the word "serve", consistent with the legal mandates and principles of justice and due process incumbent upon PSC from the United States Constitution on down:

[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)  
[https://www.senate.gov/civics/constitution\\_item/constitution.htm](https://www.senate.gov/civics/constitution_item/constitution.htm)

23. **The Public Relies Upon The PSC**. It is therefore beyond cavil that the public, including those of us in Rockland County, are entitled to rely upon this PSC to ensure that the drinking water rates which we are compelled to pay to *de facto* and *de jure* monopolist United Water New York, Inc. alias "*Suez Environnement*" alias "*GDF Suez*" ("United Water"), are in fact "just" and "reasonable" rates. That is what this instant Surcharge Case is really about. United Water seeks to impose a surcharge of approximately US\$56,800,000 on the backs of its rate-paying customers in Rockland County, New York - the same people whose taxpayer money makes the PSC and the Commission's hires therein a continuing

reality. To quote a character in "All The President's Men", one should follow the money. Our money has been travelling East. Money gets drawn out of our wallets and bank accounts on a monthly and yearly basis. The effluent thereof flows to United Water, and also flows legitimately to the coffers of the State of New York, the PSC, and their respective hires. The pecuniary effluent to United Water, though, may end up in Paris, or Belgium, or China - where what was initially Rocklander money is presumably converted to someone else's Euros or even Chinese Yuan, given the complex international inter-connections between various United Water, Suez Environnement, and GDF Suez entities, and given the fact that China Investment Corporation is reported to now own no less than a hefty Thirty Percent (30%) stake in a significant GDF Suez affiliate:

[http://en.wikipedia.org/wiki/GDF\\_Suez](http://en.wikipedia.org/wiki/GDF_Suez)

In any event, the people of Rockland County appear to be the only ones of these world parties not receiving money in the above-described *gestalt* transaction. Yet as we members of the public see it, the "system" sure is getting a lot of money at our expense. "Surcharge" is a misnomer. It should be "Surecharge".

24. **Consolidation Is Necessary And Mandated So As To Effect Justice And Fairness.** There is no possible way for PSC to fulfill its charge, mandate, and obligation to ensure Safe, Reliable Service and Just, Reasonable Rates in this Surcharge Case, unless this Surcharge Case is immediately consolidated with the Rate Case and with the Need Case (herein, "Consolidation"). This PSC cannot adjudicate Surcharge, until and after it adjudicates Need. It would be a bizarre-to-the-extreme, legally-presumptuous ruling, worthy more of Lewis Carroll than utility professionals and regulatory scholars, if this PSC somehow approved United Water's requested Surcharge before adjudicating Need. *See generally*, the master-works "Alice's Adventures In Wonderland" (1865), and "Through The Looking Glass... (1871)" (including "Jabberwocky" [1871]), by Charles Lutwidge Dodgson p/k/a Lewis Carroll. The Surcharge matter cannot be logically considered ripe for decision unless and until after Need is fully adjudicated. It would be premature for the PSC to adjudicate Surcharge at any time prior to fully adjudicating Need. (*See* the October 15, 2013 "Motion To Dismiss The Verified Petition Of UWN Y For A Long Term Water Supply Surcharge Or In The Alternative For A Prudence Investigation On Behalf Of The Town Of Ramapo", Case 13-W-0246). Yet unless these instant Cases are immediately Consolidated, Rocklanders may get stuck with exactly that kind of "curiouser and curiouser" Lewis Carroll-meets-PSC "Surcharge-first" verdict. Incidentally, Your Honor, I also move herein for a Prudence Investigation and Hearing, to the extent that same is not inconsistent with my Motion To Consolidate and the relief which I am otherwise seeking herein.

25. **Consolidation Should Have Already Occurred Automatically On July 2, 2013, And Then Again On July 19, 2013.** In fact, with all due respect, Your Honor, Consolidation should have been effected a long time ago. In the interests of judicial economy and efficiency, to avoid further waste of taxpayer monies, to avoid further confusing the taxpaying and rate-paying public including Rocklanders, to restore and maintain the public's faith in the State Judiciary and legal system generally, to ensure "Safe, Reliable Service and Just, Reasonable Rates", and for all the other reasons set forth in this Motion To Consolidate, consistent with professional canons, administrative procedural requirements, and other rules incumbent upon lawyers and judges alike, Consolidation should have first occurred automatically on **July 2, 2013**, the commencement date of the second-filed Case, the Rate Case. The Rate Case should have been Consolidated with the June 14-filed Surcharge Case, upon the July 2, 2013 Rate Case filing. Consolidation should have then occurred a second (2nd) time on **July 19, 2013**, the commencement date of the Need Case. The Need Case should have been Consolidated with the (previously-consolidated) Rate/Surcharge Case, upon the July 19, 2013 Need Case initiation. In fact, the PSC arguably should have anticipated the Need Case and Rate Case at the time of the June 14, 2013 Surcharge Case filing, and should have accordingly issued an order prospectively consolidating, to the extent ever needed, all further filings, if any, related to Rockland County, United Water, and rates or the desalination plant or both. In this respect, my motion doesn't just seek Consolidation. My motion seeks Consolidation retroactive to July 2, 2013 and July 19, 2013, *nunc pro tunc*.

26. **Consolidation Should Have Already Occurred Sua Sponte.** In my respectful view, Consolidation should have occurred *sua sponte* at the instigation of one or more of the Judges assigned to these three (3) related cases, or alternatively or in addition, upon the motion of PSC Staff Counsel. If indeed either Your Honor, your Honorable colleague Judges Epstein and Van Ort, or PSC Staff Counsel believe or determine that applicable PSC rules would have prevented such *sua sponte* common-sense Consolidation on July 2, 2013 and July 19, 2013, then clearly those applicable rules need to be changed pursuant to appropriate procedures, rulemaking, and/or petitioning of the State Legislature. Because again, this is ultimately really a software issue. The PSC Website, with but modest judicial oversight and then *imprimatur*, should have consolidated these three (3) Cases automatically once its software flagged keywords "United Water" and "Rockland". (That's a lot easier to do than finding "consolidations" in "Consolidated Edison" case law!). The PSC Website should have then further aligned these instant Cases as one, accordingly. We live in a sophisticated age of Google search-engine robots. A Google search-engine robot, in marked contradistinction to the PSC's Website, no doubt could have consolidated these

three (3) Cases automatically in less than one (1) second. I will spare the explicit Mario Cuomo speech-citation here because I think that my antipathy towards machines and certain forms of opposable thumbs is already established.

### **THE HARM TO ROCKLAND IS MULTIPLICATIVE**

27. **Triplicative Proceedings**. Instead, what PSC has done in connection with this Surcharge Case, is burden the Rockland County public with unnecessarily duplicative - nay, triplicative - proceedings. That's not funny. That's a bureaucratic vestige, of old Albany, of old New York, and of gloomy non-digital days long gone by. In the age of word-processors, broadband, and the Internet, I should not be required to draft documents or effect filings in triplicate - nor, more importantly, should any of my Rockland County neighbors. Yet to fully counter United Water's one (1) unitary, consolidated, and premeditated onslaught against my health, checkbook, and bank account, that is exactly what the current triplicative PSC digital regime requires me and all of my 270,000+ Rockland County-area neighbors saddled with United Water, to do - in order to separately fight the Surcharge Case, the Need Case, and the Rate Case. Indeed, I ask that you please review, Your Honor, the first (1st) page of this Motion To Consolidate itself. I'm filing a near-identical Motion To Consolidate contemporaneously in each of these three (3) Cases. Why? Because I really want to? No. Because I want to inundate Parties with redundant material? No. Because somehow I want to risk ticking-off three (3) judges as opposed to the daunting-enough risk of ticking-off one (1) by filing motion papers critical of PSC systems, procedures, and past practice? Absolutely not. The reason that I am filing three (3) Motions To Consolidate in what are currently three (3) different Cases with three (3) different Case Numbers, is because the current PSC Website, infrastructure, and procedural regime force me to file in proverbial triplicate. The PSC's procedural regime causes inefficiency in the processing of this Motion itself.

28. **Multiplicative Burden**. In our Surcharge Case "Party and scheduling" conference call ("Conference Call") of Wednesday, February 19, 2014, one call-participant seemed markedly unwilling to "do the math" when I requested a (since-rejected) addition of sixty (60) days to draft proposed written schedule-dates, for the benefit of Parties newly-added to this Case like me. Well, one can certainly multiply (an intentionally-rounded) 270,000 United Water rate-payers, times 3, to equal 810,000, even if United Water would prefer not to do that math. Obviously not all rate-payers adversely affected by United Water's pattern of misconduct seeking confiscatory rates and an un-needed Hudson River desalination drinking-water plant, will likely actually submit Public Comments in each of the three (3) Cases at end of

day, although I wish that they would. Yet my point is that this multiplicative math should be done anyway, to get a sense of the maximum adverse impact which any PSC decision to maintain "Trifurcation" will have on Rocklanders. Whatever economic efficiency and undue burden dumped upon me as a result of the PSC decision to maintain triplicative proceedings, must be magnified at least 270,000 times to fully appreciate how bad a PSC Trifurcation decision it really is for the good people of Rockland County as a whole. I am likely going to lose several weeks on the drafting and preparation of this Motion To Consolidate alone, not even counting *sequelae* like rebuttal and oral argument if either are granted. Two weeks, out of the lives of 270,000 people, in triplicate, would probably affect the nation's gross national product. It's no small burden for the PSC to impose on the Rockland County public.

29. **Excelsior**. We citizens of the State Of New York should no more be compelled to voice our individual and collective oppositions to corporate malfeasance in triplicate, than we should be compelled to continue to endure carbon paper, Dictaphones, and mimeograph machines. As taught to me by Mario Cuomo in his autographed photo which he sent me that still hangs on my home office wall (copy attached), our Great State's motto is "*Excelsior*", meaning "ever-upward":

[http://en.wikipedia.org/wiki/Seal\\_of\\_New\\_York](http://en.wikipedia.org/wiki/Seal_of_New_York)

<http://en.wikipedia.org/wiki/Excelsior>

30. **The New York Public Is Confused, Prejudiced, And Hurt**. Both my Rockland County neighbors and I are obviously unduly burdened by PSC's continued maintenance of, and conscious decision to maintain, three (3) separate proceedings; or, as I refer to it herein, "Trifurcation". Yet it's more than just burden, Your Honor. Members of the Rockland County public are confused, prejudiced, and hurt by Trifurcation. One of the best current examples of this, is the fact that, as of this writing, there are **ten (10)** Public Comments posted in the Surcharge Case, **nine (9)** Public Comments posted in the Rate Case, and **eight hundred sixty (860)** Public Comments posted in the Need Case. I realize that Your Honor is also assigned to the Need Case. As Your Honor and your PSC staff colleagues continue to study the **eight hundred sixty (860)** Need Case Public Comments, I implore that you please ask yourselves - why the vast current numerical disparity between the three (3) tallies?

31. **Need Case Comments From The Public (Justifiably) Attack The Rates**. The answer to the foregoing question is revealed in the eight hundred sixty (860) Need Case Public Comments themselves. A number of those Need Case written Public Comments, as well as the spoken public comments made at the October 1 and 2, 2013 Public Hearings in Rockland County, complain, *inter alia*, of the unfair and

unjust economic burden on rate-paying United Water customers. *See, e.g.*, Public Comment of Lisa Kaess, November 8, 2013, Case 13-W-0303. Some comments even specifically complained of United Water's US\$189,000,000 desalination plant price-tag and United Water's US\$56,800,000 Surcharge. *See, e.g.*, Public Comments of Peggy Kurtz, Nov. 8, 2013, Case 13-W-0303, Pages 3, 4. If any of the other rate-increase-averse commenters in the Need Case were asked the more specific question, "Do you object to the notion that United Water would seek to stick us citizens with a tab of US\$189 million bucks, inclusive of a surcharge of US\$56.8 million bucks, for a now-un"permitted" project that wasn't even PSC-approved and DEC-approved in the first instance?" - then obviously, each of their answers would be, "Yes, of course I object!". But the PSC prevents these people from rendering that more-precise Public Comment, by PSC's failure to Consolidate the three (3) Cases. PSC and its Website do not adequately, or at all, tie the strands together electronically - so neither do most of the Public Commenters in response to the material posted on that PSC Website. Why isn't PSC's real intention to harvest plenary public response, if indeed it really is the "Public" Service Commission, Judge Casutto?

32. **So, Where Is The Harm?** How is the Rockland County public hurt and prejudiced by the foregoing? Because the arcane regulatory process propagated and maintained by PSC and its PSC Website has, in many cases, confused the Rockland County public. If ever testifying before Your Honor, many of those individuals who filed the eight hundred sixty (860) written Public Comments in the Need Case would likely swear they thought their posting to one (1) proverbial electronic PSC bulletin board, meant the same thing as posting to all three (3) PSC bulletin boards. And that's not their fault. It's PSC's fault, if the fault of any. As a sampling exercise, I individually reviewed approximately two hundred (200) of the eight hundred sixty (860) written Public Comments in the Need Case. I picked the most recent ones. It is no surprise that the majority of the Comments opposed the proposed desalination plant. I also found that approximately twenty-five percent (25%) of the sampled Need Case Public Comments cited increased rates or economic hardship as at least a reason for the Commenter's opposition to the desalination plant. Some of the Comments even made specific mention of the US\$189 million overall tab or the US\$56.8 million Surcharge (*see, e.g.*, Public Comments of Peggy Kurtz, Nov. 8, 2013 and Nov. 12, 2013, Case 13-W-0303).

33. **It's Even Worse Than That.** In fact, you can see Rocklander confusion occurring in the reverse direction very clearly, too, when Your Honor reviews the ten (10) Surcharge Case Comments (when adjudicating this Case), and if Your Honor examines the nine (9) Rate Case Comments for the purposes of this Motion To Consolidate (when adjudicating this Motion; since obviously Your Honor cannot

adjudicate the merits of this Motion without looking at the Need Case and the Rate Case). Filed as a Public Comment in the Rate Case on October 2, 2013 is Rockland County Resolution "514 of 3013" from the Rockland County Legislature, which specifically addresses Need and a "\$54[sic] million" Surcharge. The Kevin and Diane O'Leary Public Comment (7/2/2013), and Robert J. Burns Public Comment (2/19/2014) - two (2) of the seven (7) current Surcharge Case Public Comments - cite desalination-plant proximity to the Indian Point Nuclear Facility and oppose Need. The James Skoufis Public Comment (7/15/2013), and David Fried Public Comment (7/23/2013) - two (2) of the nine (9) Rate Case Comments - attack the desalination plant. I know neither the O'Leary's nor Burns, but Skoufis and Fried are two of the most intelligent friends that I have ever had, and I assure Your Honor that I did not tell either of them where to post their Public Comments. The problem is not within PSC's stars, but within PSC's selves - more particularly, within PSC's Website. These tortured procedural results described hereinabove occurred because PSC has yet to provide Rocklanders with an efficient way to post streamlined consolidated Public Comments on United Water's overall predatory pattern of confiscatory rate-seeking misbehavior. That PSC system-failure occurred as of July 2, 2013, and has continued day-to-day for each day and for all times thereafter until the date of this Motion To Consolidate, Judge. These warped procedural results occurred because no one *sua sponte* consolidated these three (3) related Cases - because the PSC and, yes, its robotic PSC Website, did not *sua sponte* consolidate these three (3) related Cases.

**34. The Public Is Actually Deceived By The PSC Website, Whether Or Not The PSC Is Yet Aware Of It.** Moreover, and with all due respect to the PSC and those that comprise the PSC, the Rockland County public and rate-payers are not just confused, but actually deceived, by the very PSC Website itself. Why? Simple. As of this writing:

When one of my Rockland County neighbors logs on to the PSC Website to view the Surcharge Case docket page, they see a header reference to "Matter Master: 13-01259/13-W-0246" - and they then see, in the same header, "**Related Matter/Case No:** \_\_\_\_\_".

When one of my Rockland County neighbors logs on to the PSC Website to view the Rate Case docket page, they see a header reference to "Matter Master: 13-01437/13-W-0295" - and they then see, in the same header, "**Related Matter/Case No:** \_\_\_\_\_".

When one of my Rockland County neighbors logs on to the PSC Website to view the Need Case docket page, they see a header reference to "Matter Master: 13-01489/13-W-0303" - and they then see, in the same header, "**Related Matter/Case No:** \_\_\_\_\_".

This is awful and a miscarriage of justice.



35. **The PSC Website Therefore Explicitly Conceal The Other Two Cases From View!**. The three (3) underlinings above actually appear as completely blank spaces on the respective computer-screens. That's right, Your Honor. As unbelievable as it is to me and my Rockland County neighbors, as of the date of this Motion To Consolidate, the PSC Website does not even bother to list each of the other two (2) United Water Cases or Matters as even being "Related" to the first - either as "Related Matter(s)", or else as "Related Case(s)". That is not simply bad government, Your Honor. That is a trap - for the unwary - set by people who, with all due respect to them, should know better and should do better, consistent with our great State's motto of *Excelsior!*. It almost appears to us in Rockland, that those designing these particular PSC Website pages rubbed their hands together while saying to themselves, "Let's make sure that any ordinary citizen looking up one (1) of these Cases does not find out about the other two (2) contemporaneously-pending United Water Cases". Judging by the Public Comment number discrepancy noted hereinabove, that hypothetical self-talker may have actually succeeded at least [860] minus [10] = [850] times. That's just wrong, Your Honor. In Rockland County we are deceived, hurt, and prejudiced by this - and indeed, that deceit, hurt, and prejudice has already infected these proceedings since July 2, 2013. Rocklanders should have been accorded the opportunity to make one (1) comment to be simultaneously placed on the PSC's written record of one (1) omnibus proceeding, in which all three (3) obviously-related United Water matters were folded-in. *See, e.g.*, "The Commission intends to consider the above-referenced cases on a common record", 10/6/2006 PSC "Letter To... Keyspan", p.2 (Case 06-M-0878 [*Matter #06-00878*]). The public which the PSC is obligated to serve will have no future faith in the PSC, if we the public continue to be required to jump through multiple hoops to protect ourselves, whenever our water utility attacks us with what is but one (1) consolidated attack.

36. **What IS A "Related Matter" Or "Related Case", If Not These Three (3) Cases?**. After a diligent search of applicable regulations, I have been not able to locate any PSC-propagated definition of the phrases "Related Matter", "Related Case", or "Related Matter/Case No:", nor is Counsel to PSC apparently aware of a PSC definition of "Related Case". Using the PSC Website search-box with attendant legend reading "Search Document Text [I]n Commission Case[-]Related Documents - Advanced Search For Commission Case[-]Related Documents", I found forty-six (46) hits on "Related Matter", and twelve (12) hits on "Related Case" - none of which appeared to be documents defining either phrase. A literal search of "Related Matter/Case No" revealed thirty-eight (38) hits which appeared to be replicative of results of the first two (2) searches. Yet a review of Website-posted PSC cases reveals that PSC will sometimes deem other cases to be "Related", and thereupon electronically-link the docket-sheets of the multiple "Related... Cases" accordingly (*see, e.g.*, 13-E-0488, "Related" to 13-T-0586, 13-T-

0461, 13-M-0457, 13-T-0456, 13-T-0455, and 13-T-0454, "In the Matter of Alternating Current Transmission Upgrades - Comparative Proceeding"). PSC to date deprived Rocklanders of those types of jump-links here in the Surcharge Case, as well as the Need Case and Rate Case. That's not right.

### **THE ROLE OF COUNSEL**

37. **Lawyers Are Responsible For The Administration Of Justice.** There are lawyers that are Parties to this Surcharge Case. There are lawyers serving as Judges in the Surcharge Case, Rate Case, and Need Case. We are all mindful of the fact that New York lawyers are sworn and required to uphold the administration of justice, and the dignity and integrity of the legal and judicial system, Bench and Bar, in New York State. Indeed, we are officers of the court, members of the Bar, and are each and ourselves component parts of that system. Rules governing the practice of law are consistent with that precept. As but examples:

#### **"NEW YORK RULES OF PROFESSIONAL CONDUCT (Effective April 1, 2009) PREAMBLE:**

##### **A LAWYER'S RESPONSIBILITIES**

[1] A lawyer, as a member of the legal profession, is a representative of clients **and an officer of the legal system with special responsibility for the quality of justice.** As a representative of clients, a lawyer assumes many roles, including advisor, advocate, negotiator, and evaluator. **As an officer of the legal system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system; to seek improvement of the law; and to promote access to the legal system and the administration of justice. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because, in a constitutional democracy, legal institutions depend on popular participation and support to maintain their authority...**

[4] **The legal profession is largely self-governing.** An independent legal profession is an important force in preserving government under law, because abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice law. To the extent that lawyers meet these professional obligations, the occasion for government regulation is obviated.

[5] **The relative autonomy of the legal profession carries with it special responsibilities of self governance. Every lawyer is responsible for observance of the Rules of Professional Conduct and also should aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves. Compliance with the Rules depends primarily upon the lawyer's understanding of the Rules and desire to comply with the professional norms they embody for the benefit of clients and the legal system, and, secondarily, upon reinforcement by peer and public opinion. So**

**long as its practitioners are guided by these principles, the law will continue to be a noble profession.** [Emphasis supplied].

[http://www.nycla.org/siteFiles/NYRulesofProfessionalConduct4109\\_362.pdf](http://www.nycla.org/siteFiles/NYRulesofProfessionalConduct4109_362.pdf)

**"RULE 3.2. Delay of Litigation**

In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding **or to cause needless expense**". [Emphasis supplied].

<https://www.nycourts.gov/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>

**"RULE 8.4. Misconduct**

A lawyer or law firm shall not: ...

(d) engage in conduct that is **prejudicial to the administration of justice;...**" [Emphasis supplied].

<https://www.nycourts.gov/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>

**N.Y. STATE ADMINISTRATIVE PROCEDURE LAW §100 : NY Code - Section 100:**

**Legislative intent. The legislature hereby finds and declares that the administrative rulemaking, adjudicatory and licensing processes among the agencies of state government are inconsistent, lack uniformity and create misunderstanding by the public. In order to provide the people with simple, uniform administrative procedures, an administrative procedure act is hereby enacted.** This act guarantees that the actions of administrative agencies conform with sound standards developed in this state and nation since their founding through constitutional, statutory and case law. It insures that equitable practices will be provided to meet the public interest. It is further found that in the public interest it is desirable for state agencies to meet the requirements imposed by the administrative procedure act. Those agencies which will not have to conform to this act have been exempted from the act, either specifically by name or impliedly by definition. [Emphasis supplied].

<http://codes.lp.findlaw.com/nycode/SAP/1/100>

**N.Y. STATE ADMINISTRATIVE PROCEDURE LAW §304 : NY Code - Section 304:**

**Powers of presiding officers.** Except as otherwise provided by statute, presiding officers are authorized to: 1. Administer oaths and affirmations. 2. Sign and issue subpoenas in the name of the agency, at the request of any party, requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence and said subpoenas shall be regulated by the civil practice law and rules. Nothing herein contained shall affect the authority of an attorney for a party to issue such subpoenas under the provisions of the civil practice law and rules. 3. Provide for the taking of testimony by deposition. **4. Regulate the course of the hearings,** set the time and place for continued hearings, and fix the time for filing of briefs and other documents. **5. Direct the parties to appear and confer to consider the simplification of the issues by consent of the parties.** 6. Recommend to the agency that a stay be granted in accordance with section three hundred four, three hundred six or three hundred seven of the military law. [Emphasis supplied].

<http://codes.lp.findlaw.com/nycode/SAP/3/304>

38. **Efficiency Is An Affirmative Duty Incumbent Upon Lawyers.** Your Honor, I am not hereinabove purporting to cite every single rule and case which says that we lawyers must, even as individuals and proverbial Armies Of One, act efficiently, maintain the legal system's integrity, and seek improvement of

and public confidence in the law. What I am saying is that each of us has an affirmative duty to continually improve even the most topical and current aspects and components of the legal system - particularly our duty to adapt to changed conditions such as technological conditions relating to Internet websites, or our duty to transcend vestigial and artifactual triplicate-filing contraindications. We lawyers have an affirmative duty to make certain that other lawyers and the legal system generally, act efficiently. And I swear to Your Honor, that as much as every fiber of my being wants and intends to defeat United Water on all proverbial counts because of the harm United Water has caused and threatens to cause me and my water supply in the future, my first visceral reaction when I heard that three (3) separate People of Rockland v. United Water PSC proceedings were pending, was not a selfish one, but an altruistic one - my silent, discouraged musing about the obvious resultant risk of inconsistent PSC verdicts, vestigial of my 1987 BARBRI course. I thereupon felt great disappointment in the system of which I myself am a part. I was embarrassed for Albany, for the State of New York, for the principle of *Excelsior!*, and for our system of justice generally. When former Governor Mario Cuomo insulted the State Legislature in 1993 with "Monkeys can do that!", he was out of line. Way out of line. Uncharacteristic for him. He was very angry. I sympathize. But what I am sure he meant to say to the Legislature instead, was, "C'mon. We can do better than that. *Excelsior!*". That's not disparagement. That's not criticism. That's exhortation. In this Case, Your Honor, we can do better than that here, too. The PSC can surely do better than that.

**39. The Disadvantaged Should Not Be Further Disadvantaged, And Should Be Heard By One (1) Judge.** It's not "justice" to force Rockland County citizens to endure the hardship of triplicative filings and proceedings, particularly seniors, youngsters, veterans, and those for whom English is a second-language; *see, e.g.*, the November 13, 2013 Comments of "The United Women Of Haverstraw", both the Spanish-language version and the English-language translation, in the Need Case (Case 13-W-0303, *Matter #13-01489*). All citizens, including any arguably at a comparative strategic disadvantage in a legal proceeding, should instead be able to achieve the same result and the same level of self-defense against a single utility onslaught, by a single unitary response-filing, seen and adjudicated by one (1), not three (3), judges, in one Consolidated proceeding. It's not just, otherwise. It's not fair, otherwise. And with all due respect to you and your ALJ colleagues, Your Honor, those same citizens are also paying for three (3) judges on three (3) proverbial clocks, in what is far-better characterized as but one (1) Consolidated matter which could arguably be adjudicated by one (1) judge alone. I know that Your Honor is fully-qualified to Consolidate and then summarily dispose of this entire People of Rockland v. United Water matter. To the extent that this Motion To Consolidate can also be characterized as my Motion To Dismiss



all three (3) Cases, I herein move that you and the PSC dismiss the Surcharge Case and in fact dismiss all three (3) Cases.

40. **Over-Ripeness.** The three (3) proceedings, Surcharge, Rate, and Need, are not just ripe for Consolidation, Your Honor. They are over-ripe for Consolidation. *Compare* the ripeness of 1202 Realty Assoc. v. Evans, 126 Misc.2d 99, 481 N.Y.S.2d 208, 1984 N.Y. Misc. LEXIS 3556 (N.Y. Civ. Ct. 1984), a case involving "rent-strike" tenants in the same building consolidating twenty-three (23) non-payment proceedings for a joint trial pursuant to the below-cited CPLR §602(a), and NYCCCA Sec. 110(b): [http://www.leagle.com/decision/1984225126Misc2d99\\_1204](http://www.leagle.com/decision/1984225126Misc2d99_1204)

41. **The PSC Standard For Consolidation.** The Surcharge, Rate, and Need Cases were ripe for Consolidation almost eight (8) months ago, on July 19, 2013. As the Town of Ramapo's Counsel in this Surcharge Case, my learned able colleague Attorney Daniel P. Duthie, Esq., observed in In re Aqua Utilities, (Case 11-W-0472) before this Honorable Public Service Commission several years ago, in his February 8, 2012 "Motion To Consolidate From The Willows Homeowners Association, Inc.", one of the first things that a lawyer contemplating a consolidation motion does, is look to the tribunal itself for specific rules or standards governing how to make the motion, and whether or not such a procedural change is appropriate. If this were court and not the PSC, I would first pull and review the local rules of the court and judge, as well as statutes and cases setting forth the rule-of-law standard. I've done the equivalent of that. My understanding, at this juncture, is that the PSC does not itself promulgate specific rules governing when and how consolidation of two or more PSC proceedings can be had. Thusfar, I was not able to locate any. Incidentally, if that void of guidance is indeed the case, then that absence in and of itself, I would argue, is also indicative of inefficiency. The future generations of "Public" before the Public Service Commission need to be clearly told, at the outset of any case that affects them, how to prompt the PSC software, Website, server, and yes, the Judges, to consolidate related cases foisted upon them by the same utility onslaught. Now, that would be justice. That would be fair. That would be a procedure, borne of aforethought, of which one could be proud. That would be streamlined government of which I know our Governor would approve.

### CPLR §602(a)

42. CPLR §602(a). Therefore, I make this Motion To Consolidate in the absence of specific Commission regulatory rule-guidance on the standard for consolidation: (A) mindful of the disinclination of our American legal system to indulge judge-made law from non-appellate tribunals as opposed to their legislative and democratic alternatives, and (B) pursuant to the doctrine of Due Process, our Constitution, and the doctrine of Separation of Powers. *See, generally, Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60, 1803 U.S. LEXIS 352 (1803). I look to the statutory law of the State of New York promulgated by our Legislature, as governing, and the cases decided thereunder. The statutes include the Rules of Professional Conduct and Administrative Procedure Law sections quoted hereinabove, as well as the New York Civil Practice Law and Rules (CPLR). The CPLR and case law decided thereunder will generally speak of a "court", which applied to this Surcharge Case should be deemed instead a reference to the PSC and to Your Honor, as applicable. The main operative statute to be discussed is CPLR §602(a).

### LAW "OR" FACT

43. But One (1) Common Question Of Law OR Fact, Required. CPLR §602(a) reads as follows:

"(a) Generally. **When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay**" [Emphasis supplied]:  
<http://codes.lp.findlaw.com/nycode/CVP/6/602>

44. Disjunctive, Not Conjunctive. One of the most significant words in CPLR §602(a) is the disjunctive, non-conjunctive two-letter word "or". The movant for consolidation is not required to show both a common question of law and a common question of fact. Rather, one, or the other, suffices. *See, e.g., Alizio v. Feldman*, 97 A.D. 3d 517, 947 N.Y.S.2d 326, 2012 N.Y. App. Div. LEXIS 5288, 2012 NY Slip Op 5378 (2nd Dept 2012), a case wherein the Second Department overturned the Nassau County Supreme Court's denial of a CPLR §602(a) joint trial motion seeking to consolidate multiple medical malpractice actions, observing that the CPLR §602(a) motion should be granted therein where "common questions of law or fact exist" [Emphasis supplied]:

[http://www.nycourts.gov/reporter/3dseries/2012/2012\\_05378.htm](http://www.nycourts.gov/reporter/3dseries/2012/2012_05378.htm)

See also Badillo v. 400 East 51st St. Realty LLC, 74 A.D.3d 619, 620; 902 N.Y.S.2d 352, 353; 2010 N.Y. App. Div. LEXIS 5256, 2010 NY Slip Op 5343 (1st Dept 2010), in which the First Department reversed a New York County Supreme Court denial of a motion to consolidate:

"The motion was denied on the ground that the first [1st] action was on the trial calendar whereas the second [2nd], commenced two [2] years after the first, had not yet had a preliminary conference. This was error given no dispute that the two [2] actions involve common questions of law and fact and the possibility of inconsistent verdicts, and where neither plaintiff nor [one (1) of two (2) defendants, a contractor] opposed the motion except to request time to conduct disclosure in connection with the claims made by and against the contractor."

<http://law.justia.com/cases/new-york/appellate-division-first-department/2010/2010-05343.html>

45. **We Have Common Questions Of Law And Common Questions Of Fact**. The three (3) actions, Surcharge, Rate, and Need, clearly "involve" at least one (1) - and, in fact, multiple - "common questions (plural) of law" and "common questions (plural) of fact". CPLR §602(a) provides that Your Honor may order the Surcharge, Rate, and Need cases consolidated, and make such other orders as may tend to avoid the citizens of Rockland County unnecessary costs. Additionally, the case law decided under CPLR §602(a) calls for Consolidation in situations such as that presented here, wherein there is a risk of an inconsistent verdict (further discussed elsewhere herein) absent Consolidation. Dugan v. London Terrace Gardens, L.P., 2013 N.Y. Misc. LEXIS 4017, 2013 NY Slip Op 32112(U) (uncorrected, non-print-published) (Sup. Ct., N.Y. Co., Aug. 16, 2013: "Maintaining the actions separately would pose a risk of inconsistent dispositions", at [\*\*13]) (*citing* Badillo). I ask and move that Your Honor please order Consolidation under CPLR §602(a).

46. **What CPLR §602(a) Does NOT Require**. Again, CPLR §602(a), according to the literal reading of the statute, only requires "a" common question and does not even require multiple common questions between the consolidated cases. As one commenter opines, CPLR §602(a) requires "**only** the presence of at least one [1] important issue of law **or** one substantial issue of fact, **and does not require that the actions or proceedings involve the same parties, party alignment, types of claims, or theories of action**" [Emphasis supplied]:

<https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=3-602+New+York+Civil+Practice%3A+CPLR+602.syn&srctype=smi&srcid=296B&key=d1d706110dfefc05d6fc6b0b673cfbd0>

See also Hae Sheng Wang v. Pao-Mei Wang, 96 A.D.3d 1005, 1009; 947 N.Y.S.2d 582, 2012 N.Y. App. Div. LEXIS 5053, 2012 NY Slip Op 5141 (2nd Dept 2012), a case in which the Second Department reversed the Queens County Supreme Court's denial of a CPLR §602(a) motion to consolidate, while

observing that "**most** of the parties are the same" as between the consolidated actions [Emphasis supplied].

### **AVOIDING WASTE AND INCONSISTENCY**

47. **Why Use CPLR §602(a)?** CPLR §602(a) is the tool given to the judge, to prevent injustice, to promote judicial economy and efficiency, to avoid the needless wasteful consumption of judicial resources, to eliminate a multiplicity of actions, to save time and trouble, and to avoid expense. Please *see generally*:

<https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=3-602+New+York+Civil+Practice%3A+CPLR+602.syn&srctype=smi&srcid=296B&key=d1d706110dfefc05d6fc6b0b673cfbd0>

*See also* Amcan Holdings, Inc. v. Torgys LLP, 32 A.D.3d 337, 821 N.Y.S.2d 162, 2006 N.Y. App. Div. LEXIS 10360, 2006 NY Slip Op 6308 (1st Dept 2006), wherein the First Department reversed the New York County Supreme Court's denial of a motion to consolidate:

[http://www.nycourts.gov/reporter/3dseries/2006/2006\\_06308.htm](http://www.nycourts.gov/reporter/3dseries/2006/2006_06308.htm)

Naturally, and along with what may likely be a number of my Rockland County neighbors, I want Consolidation because PSC's premature ruling awarding the Surcharge to United Water could then allow United Water to strategically bootstrap-in an undeserving victory on Need and Rate - on the basis of the "Well, they already paid for it!" rationale. Additionally, I am appalled by the risk of inconsistent PSC verdicts thereafter, as well as the waste of time and other resources which multiplicative proceedings continue to engender.

48. **The Risk Of Inconsistent Verdicts Must Be Eliminated To Maintain Integrity Of The Judicial Process.** Particularly applicable in this Surcharge Case is the PSC's and Your Honor's starkly-real need to avoid fragmented decision-making and the risk of inconsistent verdicts - a very clear-and-present grotesque possibility and risk, if the people of Rockland County somehow lose the Surcharge Case and then win the Need Case. *See generally* Gutman v. Klein, 26 A.D.3d 464, 465; 811 N.Y.S.2d 413, 2006 N.Y. App. Div. LEXIS 2416, 2006 NY Slip Op 1459 (2nd Dept 2006) (consolidated actions, in that case through the lens of a CPLR §3211[a][4] motion-to-dismiss standard, "avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent decisions based on the same facts"); and 1202 Realty Assoc. v. Evans, 126 Misc.2d 99, 481 N.Y.S.2d 208, 209; 1984 N.Y. Misc. LEXIS 3556 (N.Y. Civ. Ct. 1984): "Consolidation or joint trial not only saves



time, trouble and expense, but also may prevent contradictory decisions based on the same facts (*citing* 2 Weinstein-Korn-Miller, NY Civ. Prac., par. 602.04; *Shlansky & Bro. v. Grossman*, 273 App. Div. 544[,], 273 A.D. 544, 78 N.Y.S.2d 127, 1948 N.Y. App. Div. LEXIS 4631 [1st Dept 1948]):  
[http://www.leagle.com/decision/1984225126Misc2d99\\_1204](http://www.leagle.com/decision/1984225126Misc2d99_1204)

**CPLR §3211(a)(4)**

49. **As Per "Gutman v. Klein", I Am Also Moving To Dismiss Under CPLR §3211(a)(4).** CPLR §3211(a)(4) contemplates that a party may move for judgment dismissing one or more causes of action against him on the ground that:

"4. there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires".

Through this statutory framework, I am the moving party. United Water is pursuing three (3) causes of action against me and my neighbors, which I maintain should really be considered the same cause of action against me, my wallet, and my bank account: the Surcharge Case, the Rate Case, and the Need Case. I therefore hereby move to dismiss the Surcharge Case because there is another action pending between the same parties for the same cause of action, before this very PSC - particularly the Need Case wherein United Water seeks *de facto* and I believe *de jure* approval of a US\$189,000,000 spend of which the US\$56,800,000 Surcharge is a component part by United Water's own admission. If Your Honor does not dismiss the Surcharge Case on the basis of CPLR §3211(a)(4), then I request that Your Honor "make such order as justice requires". Justice for me and the people of Rockland County requires, at minimum, Consolidation, and ultimately dismissal.

**THE NOTION OF "CONDITIONAL SURCHARGE" IS UNACCEPTABLE**

50. **United Water's "Poison Pill Argument" Surcharge Refund Scheme Is Unacceptable And Does Not Vitate The Threatened Harm Of Inconsistent Verdicts.** The February 10, 2014 Notice Of Procedural Conference ("February 10, 2014 Notice") in this Surcharge Case floats the notion that the Surcharge "[could] be implemented on a temporary basis, subject to refund or reparation". The actual word used in the text is "should", not "could", which suggests to me that United Water drafted it. Naturally my Rockland County neighbors and I totally reject, as unjust and unfair, any notion that we would somehow be reasonably, justly, or fairly protected if our involuntary-but-compelled US\$56.8

million Surcharge payment (or then-"accrued" portion thereof) to United Water, would be then made subject to repayment back to us if United Water thereafter loses the Need Case. We reject any such notion of a "Conditional Surcharge". The fact is, Your Honor, neither my neighbors nor I trust United Water. As bemoaned by United Water's counsel John Dillon, Esq. and others, that collective distrust *en masse* was made pretty clear in the October 1 and 2, 2013 Need Case hearings in Rockland County. Many or all of those US\$56.8 million dollars will likely long have been converted to Euros, Yuan, and perhaps even United Water "executive" expense-account "refund" checks long before we would ever be able to seek refund collection. Neither my Rockland County neighbors nor I have any desire to loan United Water US\$56,800,000 - nor should we be expected to do so.

51. **The Times They Are A-Changing.** United Water may not even be our water company next month, or next year. United Water may skip town - or be forced to. Some press has reported that GDF Suez intends to get out of the water business, which has been called to Your Honor's attention previously in Need Case Public Comments with these secondary-source citations titled "*GDF Suez to Loosen Ties to Water Business*":

<http://online.wsj.com/news/articles/SB10001424127887324640104578161523779490116>  
<http://www.euroinvestor.com/news/2012/12/05/gdf-suez-to-loosen-ties-to-water-business/12157712>  
<http://www.samachar.com/gdf-suez-to-loosen-ties-to-water-business-mmgnlajjff.html>  
<http://www.allnewsau.com/news/gdf-suez-to-loosen-ties-to-water-business/related>

The Supervisor of the Town of Ramapo in Rockland County, Mr. Christopher P. St. Lawrence, has called for a study of the removal of United Water in favor of a new Rockland County water authority. (*See "Our Town" Newspaper, Wednesday, February 19, 2014, Vol. 41, No. 18; "St. Lawrence: Study [W]ater [A]uthority", by Anne Phyllis Pinzow*). In this regard United Water may think it can "sell" Rockland's water system back to Rockland for an exorbitant profit of Euros, but given the fact that United Water's November 8, 2013 "Response" filing in the Need Case swore it would cost a UW-inflated US\$1.3 billion to replace Rockland's water mains (p."v"), that negotiation should start with Rockland requiring United Water to pay us US\$1.3 billion to take the leaky system off of their hands. Naturally I'd like nothing more than condemnation, or further "loosening" followed by Franco-flight, to occur, and I will do everything in my power to make those things occur. The point is, a PSC decision to maintain Trifurcation of proceedings, followed by a PSC ruling for a "subject-to" Surcharge somehow "refundable" if there is a later United Water loss on Need, could mean that Rocklanders will then be relegated to chasing down United Water people for a refund on the beaches of Monaco and Saint-Tropez. I don't like to fly, Your Honor, I shouldn't be forced to blow that travel money, and I do not think that they are going to allow the likes of me on the beaches of Monaco and Saint-Tropez anyway.

## **JUDICIAL DISCRETION VS. "IMPROVIDENT EXERCISE"**

52. **In This Case, Consolidation Is Required**. One word in CPLR §602(a) - the word "may" - leaves the decision to Consolidate in the judge's discretion. Gov't Employees Ins. Co. v. Uniroyal Goodrich Tire Co., 242 A.D. 2d 765, 661 N.Y.S.2d 847, 1997 App. Div. LEXIS 8513 (3rd Dept 1997) (involving a CPLR §602[a] motion for consolidation and venue-change in a wrongful death matter); Rodgers v. Warrell, 214 A.D. 2d 553, 625 N.Y.S.2d 64, 1995 N.Y. App. Div. LEXIS 3537 (2nd Dept 1995) (in which the Second Department affirmed the Nassau County Supreme Court's grant of a joint consolidation motion under CPLR §602[a] by three [3] personal injury plaintiffs). However, there are four important *caveats* to this notion of "discretion":

A. **The Presumption Is, At Minimum, In Favor Of Consolidation**. The preference and leaning of the courts in the State Of New York, and therefore of New York law, is pro-consolidation, and not anti-consolidation. "[C]onsolidation is favored by the courts as serving the interests of justice and judicial economy". Zupich v. Flushing Hosp. & Med. Ctr., 156 A.D. 2d 677, 549 N.Y.S.2d 441, 442; 1989 App. Div. LEXIS 16504 (2nd Dept 1989) (*citing* Mideal Homes Corp. v. L&C Concrete Work, 90 A.D. 2d 789, 455 N.Y.S.2d 394, 1982 N.Y. App. Div. LEXIS 19001 [2nd Dept 1982]; Heck v. Waldbaum's Supermarkets, 134 A.D. 2d 568, 521 N.Y.S.2d 468, 1987 N.Y. App. Div. LEXIS 50776 [2nd Dept 1987]). In Zupich, the Second Department overturned the Queens County Supreme Court's denial of a CPLR §602(a) motion to consolidate (A) a medical malpractice action against a doctor and (B) a strict liability product-liability action against a drug company. *See also* Citibank, N.A. v. Van Brunt Props, 34 Misc. 3d 1240(A), 950 N.Y.S.2d 721, 2012 N.Y. Misc. LEXIS 1181, 2012 NY Slip Op 50485(U)(2012) (uncorrected opinion not published in printed official reports), an unusual Kings County Supreme Court decision on, *inter alia*, a CPLR §602(a) consolidation motion which observed: "consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary cost and expense, and prevent an injustice which would result from divergent decisions based on the same facts" (at [\*\*\*9])(*citing* Zupich, at 156 A.D. 2d at 677):

<http://stopforeclosurefraud.com/2012/03/20/citibank-n-a-v-van-brunt-props-llc-nysc-plaintiffs-papers-are-defective-the-fact-that-the-limited-power-of-attorney-is-undated-is-a-further-defect/>

*See also Amcan Holdings, Inc. v. Torgys LLP*, 32 A.D.3d 337, 821 N.Y.S.2d 162, 2006 N.Y. App. Div. LEXIS 10360, 2006 NY Slip Op 6308 (1st Dept 2006), wherein the First Department reversed the New York County Supreme Court's denial of a motion to consolidate:

[http://www.nycourts.gov/reporter/3dseries/2006/2006\\_06308.htm](http://www.nycourts.gov/reporter/3dseries/2006/2006_06308.htm)

and;

**B. The Lawyer Rules Require Both Consolidation And This Motion.** Given the text of the Rules of Professional Conduct and mandates therein incumbent upon all of us lawyers, the lawyer-arbiter's affirmative obligation is to uphold the legal process and avoid needless and wasteful expense, just as I believe that, as a Party to this Surcharge Case, I have an affirmative obligation to make this Motion To Consolidate; and

**C. As Phrased In The Second Department "Flaherty" Case And The "Baker" Cases, Denial Of Consolidation Would Be An "Improvident Exercise" Of Discretion In This Case.**

When "both actions (subject of a CPLR §602[a] consolidation motion) clearly involve **similar** issues of fact and law, it would be an improvident exercise of discretion to deny consolidation..." [Emphasis supplied]. *Citibank, N.A. v. Van Brunt Props*, 34 Misc. 3d 1240(A), 950 N.Y.S.2d 721, 2012 N.Y. Misc. LEXIS 1181, 2012 NY Slip Op 50485(U)(2012) (at [\*\*\*11-12]), an unusual Kings County Supreme Court uncorrected opinion not published in printed official reports and ruling on, *inter alia*, a CPLR §602(a) consolidation motion, *citing Flaherty v. RCP Assocs.*, 208 A.D. 2d 496, 616 N.Y.S. 2d 801, 1994 N.Y. App. Div. LEXIS 9326 (2nd Dept 1994). *Flaherty* is a personal injury case of a claim by an invitee against a landlord, management company, and corporate shareholder, involving a CPLR §602(a) consolidation motion. It is the *Flaherty* case from which *Citibank v. Van Brunt* derived its "improvident exercise" text quoted above. Regarding the concept of "improvident exercise of discretion", please *see generally* the Court of Appeals opinion in *People v. Baker*, 64 N.Y.2d 1027, 478 N.E.2d 197, 1985 N.Y. LEXIS 16941, 489 N.Y.S.2d 56 (1985); and, more specifically, a different and unrelated "Baker" case called *Baker v. New York City Health & Hospitals Corp.*, 44 A.D.2d 578, 353 N.Y.S.2d 493, 495; 1974 N.Y. App. Div. LEXIS 5449 (2nd Dept 1974), wherein the Court of Appeals affirmed a Second Department order concluding that Queens County Special Term "improvidently exercised its discretion in denying permission (to a wrongful death case plaintiff) to serve late notice of a claim (on NYC Health and Hospitals Corporation) for conscious pain

and suffering". In Flaherty, the Second Department remitted an errant denial of a CPLR §602(a) consolidation cross-motion back down to the Kings County Supreme Court for a hearing or inquest as to damages for defaulting defendants:

"As both actions clearly involve **similar** issues of fact and law, it was an improvident exercise of discretion to deny consolidation..." [Emphasis supplied]. Flaherty, 616 N.Y.S. 2d 801, 802-3.

**D. Adjudication Of Need Is The Threshold Requirement Of Adjudication Of Surcharge.**

Citibank v. Van Brunt continues, at "[\*\*\*12]":

"In the case at bar, there are issues, with regard to whether the plaintiff and or its assigns have acted in good faith, which necessarily must be decided prior to a determination of whether the foreclosure of the defendants' properties should go forward".

Citibank v. Van Brunt, 34 Misc. 3d 1240(A), at "[\*\*\*12]". Whatever precedential effect *vel non* Citibank v. Van Brunt may have for us here, Your Honor, and however difficult-to-follow the opinion may be in other respects, this focal point within Citibank v. Van Brunt is totally valid. A judge should not deny consolidation on multiple matters, when one of them clearly needs to be decided as a threshold matter before the other one can be decided. That's our Case. In the instant Case, the PSC can't plausibly tell the Public that PSC is able to determine the result of the Surcharge Case before first determining the validity of Need in the Need Case as a threshold matter. For the PSC to say or do otherwise would defy logic and subvert justice.

53. **Consolidation Here Is Not Just Hortatory.** Therefore, Consolidation is not merely hortatory in a case like this, Your Honor. Rather, Consolidation is required to achieve a just and fair determination on the Surcharge Case, as well as on the Rate Case and Need Case. No doubt the ALJs and PSC have the talent and experience to look at arcane, difficult regulatory matters in three (3) respective separate and distinct vacuums. I get that. For that matter, one could probably conjure-up some administrative basis to break this into thirty (30) separate regulatory cases if one truly wanted to do so. Yet the vast majority of the people of Rockland County can't do any of that. They can't follow Trifurcation. They're not proceduralists. They're not Albany people. Most are not utility-business experts. Most are not government people. Most are not judges. And the majority of them are not lawyers, much less lawyers familiar with a bureaucratic regulatory regime that tends to parse out cases and issues within them in non-obvious, non-intuitive, and difficult ways. Yet they are the "Public" in "Public Service" Commission:

A. **One Can't Judge Surcharge Without Judging Need And Rate.** Conceptually, virtually none of us in Rockland County believe that one can fairly and justly evaluate and adjudicate the United Water-requested Surcharge (Surcharge Case), without simultaneously looking carefully at what the Surcharge money is intended to be used for (Need Case), why the roughly-contemporaneous incremental dollar amount is so large (Rate Case), and whether the expenditure is really needed (Need Case).

B. **One Can't Judge Need Without Judging Surcharge And Rate.** Conceptually, virtually none of us in Rockland County believe that one can justly and fairly evaluate and adjudicate United Water's claimed "need" for a desalination plant (Need Case), without simultaneously looking carefully at its intended one (Surcharge Case), or two (Surcharge Case plus Rate Case), price-tags.

C. **One Can't Judge Rate Without Judging Surcharge And Need.** Conceptually, virtually none of us in Rockland County believe that one can fairly and justly evaluate and adjudicate the United Water-requested major rate increase (Rate Case), without simultaneously looking carefully at the other additive and incremental money which United Water is seeking to bleed us for at principally the same time (Surcharge Case) - as well as looking at the more difficult question of whether the requested major rate increase is really just part of a massive money-grab pattern of an off-shore eco-perp preying upon a heretofore-weak and disenfranchised community like us in Rockland (Need Case and Surcharge Case).

### **"NEED" IS THE THRESHOLD ISSUE**

54. **The PSC Cannot Ignore The Threshold-Matter Nature Of The "Need" Determination.** By analogy to court proceedings in which CPLR §602(a) is invoked, a court will not cleave and compel bifurcation of a matter into two, where one piece will have an important bearing upon the other piece. *See Moretti v. 860 W. Tower, Inc.*, 221 A.D. 2d 191, 633 N.Y.S.2d 163, 1995 N.Y. App. Div. LEXIS 11552 (1st Dept 1995). In *Moretti*, the First Department affirmed the grant of a consolidation motion by the New York County Supreme Court (called therein the "IAS Court") below, observing:

"The IAS Court was within its discretion in granting removal and consolidation, in the interest of judicial economy, as both cases involved common questions of law and fact and plaintiff would otherwise be unable to obtain full redress of her rights. **Neither plaintiff's negligence claims**

**nor her request for injunctive relief could be adjudicated in the nonpayment proceeding** (*see, Atherton v. 21 E. 92nd St. Corp.*, 149 A.D. 2d 354 [539 N.Y.S.2d 933, 1989 N.Y. App. Div. LEXIS 4833 (1st Dept 1989)]). The delay in determination of the nonpayment proceeding will not cause prejudice sufficient to justify denial of the motion (*see, Amtorg Trading Corp. v. Broadway & 56th St. Assocs.*, 191 A.D. 2d 212 [594 N.Y.S.2d 204, 1993 N.Y. App. Div. LEXIS 1861 (1st Dept 1993)]), as the parties' real controversy concerns money, not possession of the premises, and as interest may be awarded if defendant prevails (CPLR 5001)" [Emphasis supplied]. *Moretti v. 860 W. Tower, Inc.*, 221 A.D. 2d 191.

*See also Citibank, N.A. v. Van Brunt Props*, 34 Misc. 3d 1240(A), 950 N.Y.S.2d 721, 2012 N.Y. Misc. LEXIS 1181, 2012 NY Slip Op 50485(U)(2012) (uncorrected opinion not published in printed official reports); and *Johnstone-Mann v. Stout*, 63 A.D.3d 1713, 882 N.Y.S.2d 609, 2009 N.Y. App. Div. LEXIS 4709, 2009 NY Slip Op 4829:

[http://www.nycourts.gov/reporter/3dseries/2009/2009\\_04829.htm](http://www.nycourts.gov/reporter/3dseries/2009/2009_04829.htm)

In *Johnstone-Mann*, the Fourth Department overturned that portion of the Chautauqua County Supreme Court's grant of a motion to bifurcate a personal injury trial, while on the other hand affirming a joint trial motion under CPLR §602(a), ruling that: **"Separate trials on the issues of liability and damage[s] should not be held where the nature of the injuries has an important bearing on the issue of liability"** [Emphasis supplied]. *Johnstone-Mann v. Stout*, 63 A.D.3d 1713, 1714. The analogy to the instant case is one-to-one mapping, Your Honor. "Nature of the injuries", is Surcharge and Rate. "[L]iability", is Need.

55. **The New York Courts Understand The Reasons Not To Bifurcate And Trifurcate.** The *Johnstone-Mann* court, at that above-quoted point in its opinion, cites *Fox v. Frometa*, 43 A.D. 3d 1432, 841 N.Y.S.2d 914, 2007 N.Y. App. Div. LEXIS 10162, 2007 NY Slip Op 7247 (4th Dept 2007), an unsuccessful personal injury defendant appeal of a denial of defendant's motion to bifurcate a trial, in another injury-and-amnesia matter wherein a plaintiff mother established that evidence of her son's injuries and resulting amnesia was necessary to allow the jury to consider whether she should be held to a lesser degree of proof on the issue of liability. The *Johnstone-Mann* decision continues to similar effect as *Fox*:

"Here, evidence of the injuries and resulting amnesia sustained by Julie Stout is " 'necessary for the... purpose of allowing the [trier of fact] to consider whether [she] should be held to a lesser degree of proof' on the issue of liability [citation omitted]... We therefore modify the order accordingly". *Johnstone-Mann v. Stout*, 882 N.Y.S.2d 609, 610:  
[http://www.nycourts.gov/reporter/3dseries/2009/2009\\_04829.htm](http://www.nycourts.gov/reporter/3dseries/2009/2009_04829.htm)

The Citibank v. Van Brunt, Johnstone-Mann, & Fox v. Frometa point of law, is that New York Courts should not allow bifurcation when one of the halves is needed to determine the disposition of the other half. Of course in this Trifurcated Case, Rockland County currently is at risk for even more "treble" than that, if Consolidation is not immediately ordered.

### **NEW YORK LAW REQUIRES THAT A COMPLETE RECORD BE MADE**

56. **"Judicial Notice" Alone, Does Not Cut It.** United Water will likely seek to flatter Your Honor and your Honorable colleagues in its reply to the foregoing point of law, claiming that, "Oh, of course each of the three Judges can take judicial notice of what is going on publicly in the context of the other two (2) proceedings. So why do Rocklanders need, or even want, Consolidation?". The answer is that mere "judicial notice" of the other Cases - on an overall matter as massive in importance, public consciousness, and potential precedential effect as this one - would be woefully insufficient to protect my interests and those of my Rockland County neighbors. Each and every document in each of the three (3) Cases which I seek to Consolidate, should already be on record in each of the other two (2) Cases. We the public should not be required to constantly click-through and skip-through three (3) different Uniform Resource Locators (URLs) to access them. That's wasteful and inefficient. As Your Honor can tell, I have to do it, for the entirety of the process of my drafting this Motion To Consolidate, as but one brutal example.

57. **The Record Needs Improving.** Moreover, all documents in all three (3) Cases need to be formally included on record before each Administrative Law Judge adjudicating Rate, Surcharge, and/or Need - at minimum, for the purposes of appeal or otherwise. After all, faced with a loss before the ALJ, how could any citizen thereafter argue in an Article 78 proceeding that the judge refused to consider a document and thereby abused his or her discretion, or engaged in a Flaherty/Baker "Improvident Exercise", even; if indeed that same document were only available by "judicial notice" and never was actually and officially included as part of the official written record of the subject Case? Judge, I think that's a rhetorical question. I don't believe that a New York State Supreme Court Justice reviewing a Rockland loss on Surcharge in an Article 78 proceeding, would be willing or even permitted to take judicial notice of two (2) other possibly difficult-to-find PSC proceedings related to Surcharge, even if they are publicly-posted on the PSC Website at the time. Indeed, has every single Supreme Court Justice in Albany County already used and successfully navigated through the PSC Website? After all, right now as of this writing, the PSC isn't even electronically cross-linking the three (3) Cases as "Related Cases" or "Related



Matters" on its PSC Website! Best of luck to those Justices in finding the other two Cases, because I didn't find them right away either!

58. **The Administrative Procedure Act Requires A Complete Record.** To similar effect, is NY SAP Law §302:

**"N.Y. STATE ADMINISTRATIVE PROCEDURE LAW § 302 : NY Code - Section 302:**  
Record. 1. The record in an adjudicatory proceeding **shall include:** (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; **(c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose;** (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, determination, opinion, order or report rendered. 2. The agency shall make a **complete** record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the agency may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the agency within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he may request. Except when any statute provides otherwise, the agency is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, or the rate specified in the contract between the agency and a contractor if prepared by a private contractor. **3. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.** [Emphasis supplied]."  
<http://codes.lp.findlaw.com/nycode/SAP/3/302>

The above-cited text governs administrative procedures in this State of New York. The text is mandatory, not hortatory. Therefore the written record in this Surcharge Case shall include "a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose". In other words, under NY SAP Law §302, in order for a judge to support a Trifurcation-continuation decision on the Surcharge Case, that judge would need to first determine that the thereto-related matters in the Rate and Need Cases were "so obvious that a statement of them would serve no useful purpose". Yet that is clearly not the situation at hand here. The Rate and Need matters are not obvious. In fact, most of us 300,000+ Rocklanders probably can't even find all the relevant Rate and Need information to date.

59. **Consolidation Is Required To Make A Complete Record.** The legal matters in the Rate Case and Need Case are sophisticated, regulatory, and well beyond the ken of most citizens - perhaps even beyond the ken of most generalist lawyers without an administrative and utilities practice or else a lot of self-study. Furthermore, the record in the Surcharge Case will not be complete, as required by §302 of the

New York State Administrative Procedure Law, unless and until Consolidation of the Surcharge Case, Rate Case, and Need Case is ordered.

60. **§302 Of The Administrative Procedure Law Requires That The PSC Vacate The February 10, 2014 Notice.** Additionally, the record in the Surcharge Case will not be complete, as required by §302 of the New York State Administrative Procedure Law, unless and until that below-quoted text set forth in the PSC's February 10, 2014 Notice limiting the scope of the case to exclude long-term supply needs, is deleted and withdrawn, and the Notice is vacated:

"The scope of this case does not include issues such as an examination of UWNYS long-term supply needs; whether, as proposed by UWNYS, a desalination plant on the Hudson River should be constructed; or otherwise how best to meet UWNYS long-term supply needs".

The foregoing PSC scope determination is an unjust and unfair wrong, Your Honor. There is no way that the PSC and Your Honor can fairly and justly evaluate the United Water Surcharge request, without simultaneously, nay, first, scrutinizing and fully determining the United Water claimed need for the desalination plant, to which the Surcharge relates by United Water's own repeated written admissions. United Water is running a divide-and-conquer, "pancaking" strategy against us in Rockland County. United Water wages this pecuniary litigation war-of-attrition against us on three (3) separate administrative fronts for strategic reasons. In the interests of justice, the PSC should not allow United Water to do that to us.

61. **My Neighbors And I Will Be Damaged By Incomplete Findings Of Fact.** The damage to the people of Rockland County is obvious if Your Honor rules otherwise, also according to §302 of the New York State Administrative Procedure Law:

"3. Findings of fact shall be based exclusively on the evidence and on matters officially noticed".

In other words, if Your Honor does not order Consolidation, then the findings of fact in this Surcharge Case will by definition exclude non-overlapping material in the Rate and Need Cases, since that material will have been never been "officially noticed" in the Surcharge Case. Again, "judicial notice" is not just insufficient - it is useless to us in this regard. "Official (meaning, on-record) notice", is the only notice that counts for business purposes. We're here on business.

62. **The PSC Website's "Public Comment" Methodology Violates §302 Of The New York State Administrative Procedure Law.** As but one example of how Trifurcation hurts Rockland, my

community struggled and waded through what was, to most, an unfamiliar process, to then assiduously put eight hundred sixty (860) written Public Comments onto the official record in the Need Case. This took an incredible amount of our collective time, Judge Casutto (not to mention the time it has and will take Your Honor to read and review each one of them, which by the way we greatly appreciate and respect). Yet none of those eight hundred sixty (860) Public Comments, to my knowledge, were automatically "picked-up" by PSC or the PSC Website and then dropped into the "Public Comment" tab-sections of the Surcharge Case and Rate Case electronic dockets - even though, from a plain reading of those Public Comments, many of them (and their Public Hearing counterpart comments) directly apply to the US\$56,800,000 Surcharge and/or the 29% (or 25%) major Rate increase. Therefore, this deformed result works to violate §302 of the N.Y. State Administrative Procedure Law, and, particularly, §302's requirement that a "complete", "officially noticed" record be made.

**63. The PSC Should Publicly Demonstrate That It Knows How To Dispense Procedural Justice.**

Your Honor, we are living in an era and culture wherein there is an unfortunate and harmful negative stereotyping of lawyers, of government, of Albany, and of our cherished American legal system and politically-oriented processes generally. *See, e.g.,* "Why [C]an't Albany [C]lean [I]tself [U]p?", The Journal News/lohud.com, Sunday, February 23, 2014, "State & Region" Section, Page 12A:

[http://www.lohud.com/article/20140222/NEWS/302220043/Corruption-Capitol-Why-can-t-Albany-](http://www.lohud.com/article/20140222/NEWS/302220043/Corruption-Capitol-Why-can-t-Albany-clean-itself-up-)

[clean-itself-up-](http://www.lohud.com/article/20140222/NEWS/302220043/Corruption-Capitol-Why-can-t-Albany-clean-itself-up-) There is clearly much public scrutiny of the Need Case. There will be a lot more incremental public scrutiny of the Surcharge Case and the Rate Case in the days, weeks, and months ahead. In fact, much of this public scrutiny has already occurred. There are approximately one hundred-twenty (120) municipalities in the United States in which United Water has either a waste-water or drinking-water presence. Almost every single one of those municipalities is governed by a county. Every single one of those 120+ municipalities and 120+ counties across the USA is specifically apprised of my community's current adverse proceedings with United Water before the PSC. The 120+ American communities have reason to know where Rockland County is, and have reason to know what the PSC is. (In that regard, if the PSC's I.T. staff happened to note a marked jump in Internet traffic and web-hits from the four [4] corners of America following the October 1 and 2, 2013 Need Case hearings, that may well be why, and incidentally, I'd love to know about it).

**64. The PSC Should Demonstrate Lean Government.** It goes even further than that. This Surcharge Case isn't just of public importance statewide, nationwide, and internationally. It is also an important opportunity for New York State government to demonstrate to the rest of the state, country, and world

that government in 2014 can actually act in a lean and efficient manner, just like I heard Governor Andrew Cuomo exhort all local New York communities to do on the car-radio on (coincidentally) my February 20, 2014 drive to Albany for the Procedural Conference. In according me the important relief which I respectfully request in this, my Motion To Consolidate, Your Honor and PSC can also thereby tell Rocklanders, New Yorkers, Americans, and the world, that the days of triplicate, mimeograph machines, Dictaphones, and carbon paper are truly over in Albany and in the State of New York. It's time. It's time to end the era of bureaucratic inefficiency, and time to end the perception thereof. This all should be one (1) unitary Case.

### **THE THREE (3) CASES ARE NOT "MARKEDLY DIFFERENT"**

65. **There Are No "Markedly Different Procedural Postures"**. Counsel to United Water will undoubtedly respond to this Motion To Consolidate by arguing that there are "markedly different procedural postures" in each of the three (3) Cases, thus somehow militating against Consolidation. In fact, United Water's counsel tipped his hand in that self-same regard by starting to utter that specific point at the Thursday, February 20, 2014 Procedural Conference - before Your Honor thankfully stopped him from arguing it further, that is. But even on that segmented utterance, United Water is wrong. Wrong on the facts. Wrong on the law. Surcharge Case's deadline is July 28, 2014. Rate Case's deadline is June 28, 2014, to the best of my knowledge. As for law, Counsel to United Water may not have yet read, for example, Badillo v. 400 East 51st St. Realty LLC, 74 A.D.3d 619, 902 N.Y.S.2d 352, 2010 N.Y. App. Div. LEXIS 5256, 2010 NY Slip Op 5343 (1st Dept 2010), in which the First Department reversed a Supreme Court denial of a motion to consolidate:

"The motion was denied on the ground that the first action was on the trial calendar whereas the second, commenced two years after the first, had not yet had a preliminary conference. This was error given no dispute that the two actions involve common questions of law and fact and the possibility of inconsistent verdicts, and where neither plaintiff nor [one of two defendants, a contractor] opposed the motion except to request time to conduct disclosure in connection with the claims made by and against the contractor". Badillo, 902 N.Y.S.2d 352, 353.  
<http://law.justia.com/cases/new-york/appellate-division-first-department/2010/2010-05343.html>

Just as I don't mind giving the procedural postures of the Rate Case, Surcharge Case, and Need Case some time to align as much as possible in Consolidation, subject to their *seriatim* summary dismissals *in toto* as separate causes of action in one Case at the first available *seriatim* moments thereafter - so, too, do I not mind giving United Water time to read Badillo and explain to me why United Water believes the learned Justices of the Appellate Division, First Department are somehow wrong.

66. **Discovery-Schedule Asynchronism Does Not Bar Consolidation Under New York Law.** Your Honor, "the fact that the actions are at different stages of discovery is not a bar to consolidation", in a situation wherein the separate actions arise out of "the same transaction or [even the same] series of transactions" [Emphasis supplied]. 7296-7304 Realty Corp. v. Guastamacchi, 2011 N.Y. Misc. LEXIS 2322, 2011 NY Slip Op 31286(U) (N.Y. Sup. Ct. May 10, 2011)(at [\*\*6]). "Series of Transactions". Now that describes our Case. The Surcharge request, Rate request, and Need request are nothing if not the three (3) components and essential elements of a series of transactions which United Water seeks to foist upon me and the rest of the Rockland County public. 7296-7304 Realty Corp. is a Richmond County Supreme Court opinion (like Citibank v. Van Brunt, *supra*, not published in printed official reports), which, while *citing* Badillo, *supra*, granted a cross-motion for consolidation, in a matter involving claims of lawyer and accountant malfeasance in a real estate investment scheme related to the sale of eight (8) Staten Island houses. Even assuming *arguendo* that the Surcharge Case, Rate Case, and Need Case are at different stages of discovery and arise out of different transactions within a series, 7296-7304 Realty Corp. and Badillo still support CPLR 602(a) Consolidation of our Surcharge Case, Rate Case, and Need Case anyway.

67. **There Is Procedural Commonality To The Surcharge, Rate, And Need Cases.** The relative procedural postures of the three (3) Cases - Surcharge, Rate, and Need - really are not that discrepant. As of this writing, their respective electronic docket sheets indicate "2", "3", and "4" calendar-items on their respective "Calendars" (Surcharge, Rate, Need). Each Case was commenced within the same 35-day period last summer - in the time-period between June 14, 2013 (Surcharge) and July 19, 2013 (Need). The Surcharge and Rate Cases each commenced with the expected petition/tariff and SAPA-notice steps. All three (3) Cases have been subject to various extension requests, and procedural conferences have been conducted for at least two (2) of the three (3) Cases. All three (3) Cases have led to the appearance of the Utility Intervention Unit (UIU). All three (3) Cases allow, and have allowed, Public Comment. As of mid-April, 2014, as currently scheduled, there will have been Evidentiary Hearings in all Cases but the Need Case, which is in fact the most significant procedural disparity between the three (3) Cases. Yet as discussed in Paragraphs 74 through 77 hereinbelow, this Motion To Consolidate, if granted, will not compel the holding of Need Case evidentiary hearings prior to the June 28, 2014 or July 28, 2014 apparent deadlines, since Your Honor will be able to dismiss the Rate and Surcharge Case on or before June 28, 2014 and July 28, 2014, respectively, while leaving the Need issues still extant and still housed

within a Consolidated, streamlined proceeding. It will be like two (2) beans successively falling out of a three (3)-bean pod.

68. **Your Honor Can Align These Cases As May Be Needed.** If Your Honor believes that the three (3) Cases are that procedurally discrepant, then the procedural postures can be aligned by allowing one (say, the Need Case), to procedurally align with the other (say, the Rate Case), to the full extent practicable, in the body of one (1) unitary omnibus Consolidated proceeding. One ALJ order and (1) conference call can do most of it - just as such kind of follow-up was directed in Consolidated Edison Company of New York, Inc. - Steam Rates, Notice Of Consolidation Of Issue (issued January 6, 2012), p.3., (Case 09-S-0794 and 09-S-0029) before this Honorable Commission, ordering, *inter alia*, that the Judges rule on "[a]ny scheduling or re-scheduling" relating thereto. The Rate Case and Surcharge Case can then be dismissed with prejudice on or before June 28, 2014 and July 28, 2014, respectively. The Need Case can thereafter be dismissed with prejudice at such later time or times as the PSC needs to take to reach that conclusion, at PSC's leisure. There is no procedural reason or other reason why those *seriatim* dismissal events cannot occur in that sequence while housed within the judicially-redesigned body of one (1) unitary Case.

#### **FURTHER REFUTATION OF UNITED WATER'S LIKELY OPPOSITION**

69. **New York Law Provides That Mere Delay Does Not Bar Consolidation.** The case law is clear that a consolidation delay alone - say the "delay" between now and a Consolidation conference call as warranted by Con Ed - is in no way a bar to Consolidation. "Mere delay of a trial is not sufficient basis upon which to deny a motion for consolidation". Whiteman v. Parsons Transp. Group of N.Y., Inc., 72 A.D. 3d 677, 678; 900 N.Y.S.2d 87, 2010 N.Y. App. Div. LEXIS 2882, 2010 NY Slip Op 2944 (2nd Dept 2010):

[http://www.nycourts.gov/reporter/3dseries/2010/2010\\_02944.htm](http://www.nycourts.gov/reporter/3dseries/2010/2010_02944.htm)

*citing* Alsol Enters., Ltd. v. Premier Lincoln-Mercury, Inc., 11 A.D. 3d 494, 783 N.Y.S. 2d 620, 2004 N.Y.S. 2d 620, 2004 N.Y. App. Div. LEXIS 11986 (2nd Dept 2004); Zupich v. Flushing Hosp. & Med. Ctr., 156 A.D. 2d 677, 549 N.Y.S.2d 441, 1989 App. Div. LEXIS 16504 (2nd Dept 1989); *See also* Moretti v. 860 W. Tower, Inc., 221 A.D. 2d 191, 633 N.Y.S.2d 163, 1995 N.Y. App. Div. LEXIS 11552 (1st Dept 1995) (wherein the First Department affirmed the IAS Court's granting of a consolidation motion); *and* Washington Mutual Bank v. Twenty Three Realty LLC, (Sup. Ct., Nassau Co., Index No.

11970-06-Action No 1, Order entered June 1, 2007, p.5), citing Moretti: "Delay in the determination of a non-payment proceeding is not prejudice sufficient to justify denial of consolidation":

<http://www.rosenbergrosenberg.com/wp-content/pdfs/wamu.pdf>

and Citibank, N.A. v. Van Brunt Props, 34 Misc. 3d 1240(A), 950 N.Y.S.2d 721, 2012 N.Y. Misc. LEXIS 1181, 2012 NY Slip Op 50485(U)(2012) (uncorrected opinion not published in printed official reports), a Supreme Court, Kings County decision on, *inter alia*, a CPLR §602(a) consolidation motion, observing that "mere delay of the trial is not a sufficient basis upon which to deny a motion for a joint trial" [at \*\*\*11]; and *see generally* Perini Corp. v. WDF, Inc., 33 A.D. 3d 605, 822 N.Y.S.2d 295, 2006 N.Y. App. Div. LEXIS 11989, 2006 NY Slip Op 7158 (2nd Dept 2006).

70. **United Water Will Suffer No Prejudice From Consolidation.** Interestingly, at the February 20, 2014 Procedural Conference, United Water's counsel led with the phrase "markedly different procedural postures" as his client's argument against Consolidation. He didn't lead with the "P"-word - that is, the word "Prejudice". There's a reason for that (aside from the fact that United Water will perhaps figure out how to use the "P"-word more promptly by the time United Water opposes this Motion To Consolidate). United Water is owned by a couple of filthy-rich French parents. United Water would not really be prejudiced by Consolidation. On the other hand, the people of Rockland County, including me, would be severely prejudiced if Consolidation doesn't occur. In making the determination in favor of Consolidation, Your Honor will undoubtedly want to balance the competing interests. In the instant situation, the regular people of Rockland County, many of whom are living paycheck-to-paycheck, are up against multiple United Water subsidiaries of a large, multi-national conglomerate represented by multiple litigators at multiple law firms, seemingly inclined to spend what feels like an unlimited amount of resources to wage a war of attrition on three (3) separate procedural fronts against its own rate-paying customers - claiming entitlement to a Fifty-Six-Point-Eight Million Dollar (US\$56,800,000) Surcharge so that United Water can squander our own money to fight us with it. With all due respect, Your Honor, that doesn't sound like prejudice to United Water, to me.

### **THE "COMMON QUESTIONS"**

71. **United Water Will Likely Try To Deny The Existence Of Common Questions Of Law And Fact.** In response to this Motion To Consolidate, Counsel to United Water will also likely argue that there are few or no common questions of law or fact between the Surcharge Case, the Rate Case, and the

Need Case. If and when United Water makes that argument, it should be rejected as specious. In any event, the commonality requirement of CPLR §602(a) commands only "a" single common question.

**72. The CPLR §602(a) "Common Question" Need Only Be Articulated In General Terms.**

Moreover, the New York courts have accepted the articulation of that one "common question" in the most general of terms. Not only that - but what I realized when reading the cases, is that the New York courts don't even expect the questions to be actually phrased in the form of a question like TV's Alex Trebek of "Jeopardy" might require. For example, the noun "the negligence of drivers of two vehicles" can qualify as a "common question [singular] of law or fact" for consolidation purposes. *See, e.g., Shojaeifard v. Iraggi*, (Sup. Ct. Nassau Co., Index No. 014036/98, p.2), a short-form order on a CPLR §602(a) motion to consolidate illustrating a valid reason for denying consolidation not at all present here - namely, the potential conflicted result that one of the parties will thereby be designated in a plaintiff position and also in a defendant position in the same case, on each of the opposite ends of the "v.":

[http://decisions.courts.state.ny.us/10jd/nassau/decisions/index/index\\_new/ort/2001april/014036-98.pdf](http://decisions.courts.state.ny.us/10jd/nassau/decisions/index/index_new/ort/2001april/014036-98.pdf)

The fact that two actions "involve common parties and arise out of the same automobile accident taking place on the Triborough Bridge", a compound verb-object combination - too, qualifies as sufficient and multiple "common questions [plural] of law or fact". *Deodat v. Mountain Glen*, 2008 N.Y. Misc. LEXIS 8140, 2008 NY Slip Op 33380(U) (N.Y. Sup. Ct. Dec. 12, 2008)(\*\*2), another short-form order, granting a CPLR §602(a) motion to consolidate:

[http://www.nycourts.gov/library/queens/PDF\\_files/12\\_08/deodat-mountain.pdf](http://www.nycourts.gov/library/queens/PDF_files/12_08/deodat-mountain.pdf)

The respective culpability of two different defendants for med mal and product injury, respectively - two nouns, as I have phrased it here - will also constitute a sufficient "common issue" [singular] for consolidation purposes. *Zupich v. Flushing Hosp. & Med. Ctr.*, 156 A.D. 2d 677, 549 N.Y.S.2d 441, 1989 App. Div. LEXIS 16504 (2nd Dept 1989). In *Zupich*, the Second Department overturned a Queens County Supreme Court denial of a CPLR §602(a) motion to consolidate (A) a medical malpractice action against a doctor and (B) a strict liability product-liability action against a drug company.

**73. CPLR §602(a) "Common Questions" In This Surcharge Case.**

When comparing the Surcharge Case to the Rate Case and the Need Case, which Your Honor must indeed do to at least some degree when adjudicating the merits this Motion to Consolidate, the comparison reveals that the parties are principally the same, and that there are multiple common questions of law and fact. Consolidation is within the sound discretion of the Administrative Law Judge and is indeed the appropriate step to take pursuant to applicable law. No Party will be prejudiced by Consolidation. Noting that former President



Woodrow Wilson coincidentally once had his Fourteen (14) Points, and so do I have at least fourteen (14) here - *see generally*:

[http://en.wikipedia.org/wiki/Fourteen\\_Points](http://en.wikipedia.org/wiki/Fourteen_Points)

the common questions of law and fact with respect to the Surcharge Case, Rate Case, and Need Case include the following:

- A. The operation of a public water supply in Rockland County. (That's the big one, and the CPLR §602(a) common-question analysis should end right there. But if it doesn't...):
- B. The future of the operation of the public water supply in Rockland County.
- C. Whether United Water is entitled to incremental money for the operation of that water supply.
- D. Whether there is truly a shortage of water in Rockland County.
- E. Whether there is truly a shortage of water in Rockland County that would, *inter alia*, justify rate-increases.
- F. Whether there is truly a shortage of water in Rockland County that would, *inter alia*, justify rate-increases of the United Water-requested size and magnitude.
- G. Whether there is truly a shortage of water in Rockland County that would, *inter alia*, justify incremental expenditures by United Water.
- H. Whether United Water has engaged in a pattern of misconduct to deprive Rocklanders of their money.
- I. Whether United Water has deceived this PSC to deprive Rocklanders of their money.
- J. Whether United Water has sought to deceive this PSC to deprive Rocklanders of their money.
- K. Whether United Water has overcharged Rocklanders.
- L. Whether United Water has sought to overcharge Rocklanders.
- M. Whether the documents that United Water has proffered in alleged support of expenditures, are authentic, legitimate, or valid.
- N. Whether this PSC will protect Rocklanders against the three (3) related confiscatory requests made by United Water.

Or, to assuage my Rockland County readers who may be fans of Mr. Trebek, I will phrase each in the form of a question, even if the New York State courts may not (yet) require same of a CPLR §602(a) Motion To Consolidate. After all, a "question", should mean a "question", in my view:

- i. Who really controls the public water supply in Rockland County, if not the public?
- ii. What is the future of the operation of the public water supply in Rockland County?

- iii. Could United Water really be entitled to that much incremental money for the operation of that water supply?
- iv. Is there truly a shortage of water in Rockland County, or was that just United Water's hydromercantile scare-tactic?
- v. Is there truly a shortage of water in Rockland County that would, *inter alia*, justify rate-increases?
- vi. Is there truly a shortage of water in Rockland County that would, *inter alia*, justify rate-increases of that requested size and magnitude?
- vii. Is there truly a shortage of water in Rockland County that would, *inter alia*, justify incremental expenditures by United Water?
- viii. Has United Water has engaged in a pattern of misconduct to deprive Rocklanders of our money?
- ix. Has United Water deceived this PSC to deprive Rocklanders of our money?
- x. Has United Water sought to deceive this PSC to deprive Rocklanders of our money?
- xi. Has United Water overcharged Rocklanders?
- xii. Has United Water sought to overcharge Rocklanders?
- xiii. Are the documents that United Water thusfar proffered in alleged support of expenditures, authentic, legitimate, or valid?
- xiv. Will this PSC will protect Rocklanders against the three (3) related confiscatory requests made by United Water?

If needed for the purposes of analysis, each common question above can easily be converted into "questions of law" by prefacing them with text such as "Will the PSC and current applicable law actually allow..." For example, the last question can be re-phrased as, "Will the PSC and current applicable law actually allow United Water to make these three (3) related confiscatory requests of Rocklanders?". That is as important a question of law as Rocklanders could ever ask in these proceedings. The fourteen (14) common questions of law and fact should be in the forefront of every reader's mind when sifting through the three (3) Case files. In each Judge's mind, too - with all due respect.

### **FURTHER PROCEDURAL STEPS**

74. **The Schedule Need Not Be Materially Altered.** Additionally, there is no reason to believe that the schedule for any of these current proceedings, Rate Case, Surcharge Case, or Need Case, will be

materially affected by or after Consolidation. Even if and assuming that the respective June 28, 2014 and July 28, 2014 "negative option" suspension-period-expiration deadlines for decisions on the Rate Case and Surcharge Case are and remain unaltered under New York Public Service Law Sec. 89-c(10)(f) and (10)(b):

[http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$PBS89-](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$PBS89-C$$@TXPBS089-)

[C+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=14392027+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$PBS89-C$$@TXPBS089-C+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=14392027+&TARGET=VIEW)

Your Honor could still dismiss United Water's Rate and Surcharge requests prior to June 28 and July 28, 2014, respectively, while leaving the Need question extant for later disposition and dismissal still housed within the body of one Consolidated case, under CPLR §3211 and CPLR §602(a). On the other hand, however, I respectfully submit that Your Honor could not approve United Water's Surcharge request prior to adjudicating Need - though Your Honor could deny Surcharge as a threshold matter. The latter approach would work. All that said, adjudication and rejection of Need first-in-time in Rockland County's favor would be a correct procedure as well as a correct result in terms of fairness and justice, too - as long as the Need decision is not rushed.

75. **A Supreme Court Justice, After All, Can Dismiss Two Of Three Causes Of Action.** The equivalent of sequential claim-dismissal could easily happen in a New York State Supreme Court proceeding, after all. If a Justice of the Supreme Court consolidated three (3) conceptually-related cases with similar parties, each containing one (1) cause of action, into one (1) consolidated case, that judge would then have one (1) case with three (3) causes of action in it. The judge could then dismiss the first (1st) cause of action and second (2nd) cause of action - yes, even by two (2) successive deadlines - while leaving the third (3rd) cause of action extant for later determination. A partial dismissal of claims and causes of action happens in state and federal court all the time (*see, e.g.*, CPLR §3211), and actually works to winnow-down and render more efficient the court process generally - as it would here. So, one might ask, why consolidate? Well, for the sake of argument and to round the numbers off, let's assume that each of the three (3) PSC Case files contain one-third of the total amount of material filed on the overall United Water onslaught. What's the benefit to Consolidation? The benefit is that the consolidating judge thereby effects a better and more fair brand of justice - because the consolidating judge thereby approves a procedural step that puts the entirety of the matter's written record before him (and before reviewing appellate courts thereafter, if any), not just (roughly) one-third ( $\frac{1}{3}$ ) of the matter's written record before him. Decisions need to be made on the totality of facts and circumstances relating to those decisions. My Rockland County neighbors and I deserve to have an efficient adjudicatory process

wherein the judge is not limited to only one-third (1/3) or so of the total record, due to some arcane and artifactual past practice that in no way serves the interests of the "Public" to which the Public Service Commission is actually beholden.

76. **A Supreme Court Justice, After All, Can Also Dismiss A Cause Of Action Without Prejudice With Leave To Later Re-File.** Alternatively, akin to a Supreme Court measure, Your Honor could dismiss the Surcharge Case, either before or after Consolidation, without prejudice, and thereupon accord United Water leave to refile its Surcharge request if and after United Water were to somehow prevail on Need thereafter. That being said, my request is that the Surcharge Case, Need Case, and Rate Case all be consolidated and then dismissed with prejudice now. Consolidation will accord this PSC the procedural ability to do so with one (1) order. Maybe even one (1) page.

77. **I Request That The July 28, 2014 Deadline Be Extended By Judicial Order.** Additionally, it is my understanding that it is within a judge's jurisdiction in New York State to extend deadlines where justice requires same. *See, e.g.,*:

New York State Judiciary Law, 2-B - General powers of courts of record.  
§2-b. General powers of courts of record. A court of record has power  
...3. **to devise and make new process** and forms of proceedings, necessary  
to carry into effect the powers and jurisdiction possessed by it. [Emphasis supplied].  
<http://codes.lp.findlaw.com/nycode/JUD/2/2-b>

CPLR §2004: "[e]xcept where otherwise **expressly** prescribed by law, the court may extend the time fixed **by any statute, rule or order for doing any act**, upon such terms **as may be just and upon good cause shown**, whether the application for extension is made before or after the expiration of the time fixed" [Emphasis supplied].  
<http://codes.lp.findlaw.com/nycode/CVP/20/2004>

This Surcharge Case would constitute the *a fortiori* example compelling §2-b and §2004 extension of the apparent June 28, 2014 and July 28, 2014 tripwire "negative option" deadlines on Rate and Surcharge, respectively, once the Surcharge Case is Consolidated with the Need Case and Rate Case. The resultant omnibus proceeding should thereafter be considered a new matter for which new extended deadlines should apply under §2-b and §2004, in the interests of providing additional members of the public a meaningful opportunity to participate in the process of adjudication and resolution *in toto*, and therefore in the interests of justice. Again, the PSC's apparent inability to Consolidate these Cases thusfar since July 2 and July 19, 2014, has infected these proceedings and certainly dampened and inhibited public enthusiasm and participation in the Surcharge Case and in the Rate Case. The only way to hope to fix

that is to Consolidate now. I further request that, under New York State Judiciary Law §2-b and CPLR §2004, the apparent June 28 and July 28, 2014 deadlines for the PSC to determine the Rate and Surcharge Cases, be suspended indefinitely until, at earliest, after the full resolution of the Need Case.

78. **I Will Be Prejudiced If The Relief I Request Is Not Granted.** The failure to Consolidate these Cases at this time will prejudice me, Attorney John J. Tormey III, Esq., and may also prejudice other Rockland County rate-payers and some or all of United Water's numerous other opponents in these proceedings. Consolidation will streamline all three (3) cases, will avoid inconsistent results, and will reduce the burden on the Commission's scarce resources.

### **CONCLUSION**

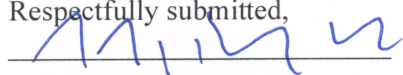
Accordingly, the three (3) Cases should be Consolidated immediately since that would provide the Commission an opportunity to correct a serious and continuing injustice.

For the foregoing reasons, Attorney John J. Tormey III, Esq. requests that the consideration of **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)** be immediately consolidated with, and then decided contemporaneously with, the following two Cases:

**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); 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).**

Dated: March 7, 2014  
Hamlet of Pearl River, Town of Orangetown  
County of Rockland. State of New York  
Respectfully submitted,



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cc:

Parties in Case 13-W-0246

Parties in Case 13-W-0295

Parties in Case 13-W-0303

**Exhibit "A" - The Past Proceedings**

**Exhibit "B" - Copies Of The Cases, Statutes, And Other Matter Cited Herein**



## **TABLE OF AUTHORITIES**

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**Rate: 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)**  
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**Need: 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**  
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Case 99-E-0274 (*Matter #99-00274*), 99-E-0275 (*Matter #99-00275*), 99-E-0279 (*Matter #99-00279*), 99-E-1358 (*Matter #99-01358*) (In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR in Relation to Complaint Procedures -- Appeal by 48th Street Owners Corp. of the Informal Decision Rendered in: E774700, in Favor of Consolidated Edison Company of New York, Inc., filed in C 26358)

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Verified Petition of United Water  
New York Inc. for Implementation of a Long-Term  
Water Supply Surcharge, And Related Tariff  
Amendment.**

**Case 13-W-0246  
(Matter #13-01259)  
Honorable Kevin Jaye Casutto,  
Administrative Law Judge  
(the "Surcharge Case")**

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**Proceeding on Motion of the Commission as to the  
Rates, Charges, Rules and Regulations of United  
Water New York Inc. for Water Service.**

**Case 13-W-0295  
(Matter #13-01437)  
Honorable Rafael A. Epstein  
and Honorable David R. Van Ort,  
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(the "Rate Case")**

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**Proceeding on Motion of the Commission to Examine  
United Water New York[] Inc.'s Development of a New  
Long-Term Water Supply Source.**

**Case 13-W-0303  
(Matter #13-01489)  
Honorable Kevin Jaye Casutto,  
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(the "Need Case")**

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**AFFIRMATION OF SERVICE**

John J. Tormey III, Esq., an attorney duly licensed to practice law in the State of New York, affirms under penalties of perjury that the following is true: On March 7, 2014, a true and complete electronic copy of the Motion To Consolidate Three (3) Cases, Into One (1) Case, has been served *via* electronic means to the addresses listed on the Party Service List prepared by the Public Service Commission in Case 13-W-0246 attached hereto and made a part hereof by this reference. Any United Water Party known or believed to be a non-lawyer has been served through United Water counsel John Dillon, Esq.

March 7, 2014

By:



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**SERVICE LIST**

Parties in Case #13-W-0246

Parties in Case #13-W-0295

Parties in Case #13-W-0303