

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the	:	
Commission as to the Rates,	:	
Charges, Rules and Regulations of	:	Case 13-W-0539
United Water New Rochelle Inc. for	:	
Water Service	:	

Proceeding on Motion of the	:	
Commission as to the Rates,	:	
Charges, Rules and Regulations of	:	Case 13-W-0564
United Water Westchester Inc. for	:	
Water Service	:	

Verified Joint Petition of United	:	
Water Westchester Inc. and United	:	
Water New Rochelle Inc. for	:	Case 14-W-0006
Approval, Pursuant to New York	:	
State Public Service Law Sections	:	
108 and 89-h, to Merge and Become	:	
United Water Westchester Inc.	:	

MUNICIPAL CONSORTIUM'S OPPOSITION

TO

THE JOINT PROPOSAL

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INTRODUCTION

On July 3, 2014, three parties submitted a Joint Proposal ("JP") in this proceeding. An evidentiary hearing on the JP was held on August 14, 2014 at which a panel of United Water New Rochelle Inc. ("UWNR"), United Water Westchester ("UWW") and Department of Public Service Staff ("Staff") witnesses were

presented.

The JP calls for non-levelized rate increases as follows:

Rate Year 1 ¹	\$6,811,235	10.89% ²
Rate Year 2	\$1,384,606	2.00%
Rate Year 3	\$1,987,016	2.81%
Total	\$10,182,857	

Over the three-year rate plan, the companies will receive \$25,189,933. JP, Appendix 1, page 65 of 65.

The JP also provides the Commission with the option of a levelized set of rate increases of \$4,249,812 for each of the three rate years. The total for the levelized option is \$12,749,436. The difference is \$2,566,579 more for the levelization option. Yet the JP states that "The Rate Year Two surcharge will collect \$303,782 and the Rate Year Three surcharge will collect \$2,566,578." Assuming one accepts the interest calculation for the sake of this discussion, there is \$303,782 more being collected in surcharges than is revealed in the comparison between the non-levelized to levelized increase.

The MC also questions why the levelization option uses the pre-tax return of 10.47% as the basis for calculating the

1 Rate Year 1 is the twelve months ending October 31, 2015.

2 The increase for General Metered Sales is inexplicably much higher. See Appendix 4, Page 38 of 39. For example, the 5/8 inch service category that covers the vast majority of customers goes up 19.14% in the non-levelized option for RY1. Public Fire Protection (hydrant rental) goes up 17.57%. This calls into question the accuracy of the rate design that flows out of the revenue requirement set forth in the JP.

interest charge. It is obviously more equitable to use the companies' short-term cost of debt since that is how the companies will make-up any shortfall from the levelization option. To allow the companies to charge the pre-tax rate of return converts a short-term customer loan into the equivalent of an investment in rate base.

This brief will show that the JP is not in the public interest and should not be adopted without substantial changes. It provides no rate protections or benefits to the ratepayers of UWNR. The only real benefit accrues to UWNR and UWW due to the higher than inflation rate increase, the exorbitant rate of return on equity and the fact that Staff's and the companies' work load will be reduced due to the three-year term of the rate plan at the heart of the JP.

The MC takes no position on the merger other than to observe that the merger savings of \$182,783 are puny compared to the non-levelied rate increase of \$10.2 million over the Rate Plan producing only a 1.8% reduction in the revenue requirement. Considering the combined companies total revenues, it is wholly insufficient to meet the public benefit standard required by this Commission in other merger cases.

Finally, the MC must observe that there are actually two suspension periods operating in this case. The first was triggered by the November 27, 2013 filing that did not contain

UWW tariff leaves. And the second was triggered when UWW filed its own tariff leaves on January 6, 2014. See footnote 3 on page 1 of the JP.

THE JP IS NOT IN THE PUBLIC INTEREST WITH RESPECT TO

UWNR CUSTOMERS

Staff in its Statement in Support of the JP, dated July 22, 2014, correctly summarizes the Commission's criteria for judging whether a JP is in the public interest:

The Commission explained that in considering a JP, it reviews the extent to which that proposal is supported by generally adverse parties, and it also determines whether the record for the decision to adopt a JP is adequate. To be approved, a JP must be consistent with law and public policy, have a rational basis, balance the interests of customers and shareholders, and compare favorably with the probable outcome of litigation.

Here the customers of UWNR do not support this settlement because it provides them with no rate protection, nor any mitigation of a rate increase that is several times the rate of inflation.

The same management that runs United Water New York Inc. runs UWNR and UWW. And that management has been criticized by the Commission in the recent rate order in Case 13-W-0295.

Before addressing specific concerns regarding the JP, it is helpful to set forth the regulatory framework that Your Honor's review of the JP should be conducted under.

REGULATORY FRAMEWORK

As the UWNY Order states:

The Public Service Law (PSL) assigns us the jurisdiction and responsibility to supervise the production, sale, and distribution of water in New York State.¹⁴ The Commission is specifically called upon to regulate water rates so that all charges are just, reasonable and designed to ensure that the of such services will be safe and adequate.¹⁵ The Commission is free to entertain, ignore or assign whatever weight it deems appropriate to factors in setting utility rates, and Commission determinations of rates are not to be set aside unless they are without any rational basis or reasonable support in the record.¹⁶ The Commission must make a revenue requirement allowance that will allow the Company not a guarantee but a reasonable opportunity to recover the cost of funds supplied to it by investors. A revenue allowance so determined will enable UWNY, assuming the Company is managed efficiently, to maintain and support its credit and raise capital at a rate generally equal to that available from other investments in other business undertakings with corresponding risks and uncertainties.¹⁷ At the same time, in carrying out our responsibilities under the PSL, we must strive to protect ratepayers from unreasonable expenses. Overall we must accomplish a reasonable balance of ratepayer and shareholder

¹⁴ PSL §§5(1)(f), 89-a et seq.

¹⁵ PSL §89-b.

¹⁶ Abrams v. PSC, 67 N.Y.2d 205, 501 N.Y.S.2d 777, 492 N.E.2d 1193 (1986).

¹⁷ Federal Power Com. v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works & Improvement Co. v. PSC, 262 U.S. 679 (1923).

¹⁸ Abrams v. PSC, *supra*.

One key ingredient in the Commission's Regulatory Framework formulation is "assuming the company is managed efficiently".

Here the record reflects that we have neither efficient nor economical management – as was specifically acknowledged in the

UWNY Order. What would make UWNR and UWW any different?

The Order states in the Introduction:

We are also taking this opportunity to strongly remind UWNY of the need to carefully examine strategies to reduce upward rate pressure and call on the Company to demonstrate that it is pursuing all reasonable management and cost control strategies and address such efforts in its next major rate filing.

That introductory language was informed by the following accurate observations in the Order:

The commenters unanimously oppose UWNY's rate request, and predominantly argue that the Company has not earned a rate allowance predicated on the assumption that the Company would provide adequate service. More specifically, much of the public commentary was focused on issues also argued by parties and their witnesses in the formal evidentiary proceedings.

Issues in this category and discussed below include UWNY's failure to obtain an economic obsolescence deduction from property taxes; proposals that we require an audit of charges to UWNY from its affiliated service company, M&S Co. Inc.; UWNY's alleged failure to plan its construction program rationally on the basis of cost benefit analyses; views about the proper level of the cost of common equity, i.e., the rate of return UWNY legally must have a reasonable opportunity to earn if it operates efficiently; fire service deficiencies; and the merits of a comprehensive management audit.

* * * *

As we discuss below, some of these visions of a well regulated utility company misconceive or disregard the reasons for rate increases, including both the rationale and the limits of a company's legal entitlement to rates. Nevertheless, much of the commentary has important validity in that it serves to call attention to a fundamental breakdown in understanding between the Company and its key stakeholders. As we describe further below, it would be useful for UWNY to undertake a serious examination of its customer and municipal relationships and propose a plan for

improving them.

Order at pages 6 to 8.

UWNY BEARS THE BURDEN OF PROOF TO SHOW

THAT A RATE INCREASE IS WARRANTED

It is axiomatic that the utility bears the burden of proof to justify rate relief. Actually, the requirement that the utility bears the burden of proof is codified in the Commission's regulations at 16 NYCRR §61.1:

The burden of proof is upon the utility whose rates, rules and regulations relating thereto, charged or proposed to be charged, are being considered.

And that regulation is simply the implementation of the Public Service Law 89-c(10)(h)

At any hearing involving a rate, the burden of proof to show that the change or proposed change if proposed by the corporation, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be upon the corporation; and the commission may give to the hearing and decision of such questions preference over all other questions pending before it.

When the Commission sets rates it must make sure, and it has been doing so for over a century, that such rates are just and reasonable.

One yardstick against which to measure rate increase is the Consumer Price Index. By that measure this JP fails.

	<u>CPI Index (all items)</u>	
	<u>(NY – NJ)</u>	<u>Percent Change</u>
2006	603.9	-
2007	621.106	2.998%
2008	644.951	3.839%
2009	642.658	(0.356%)
2010	653.198	1.640%
2011	673.818	3.157%
2012	687.761	2.069%
2013	697.836	1.465% ³

While it is true that the cost of providing water service is not necessarily equivalent to the basket of goods and services in the Consumer Price Index, nevertheless, the UWNR and UWW should be put to the test to demonstrate why their costs are so much higher than general inflation.

What follows are more detailed and specific criticisms of the JP.

SPECIFIC CRITICISMS OF THE JP

Excessive Labor Costs

At a time when there is no or very little growth in both service territories, why would an enterprise hire more employees? The JP provides for the addition of four new

3 http://www.bls.gov/xg_shells/ro2xgcpius1967.htm

positions that represents a 6.3% increase in employees and an associated increase in annual labor cost, including benefits. Neither company is growing as can be seen by Exhibit 154 that shows a total of 27 new residential units for UWNR and 36 new customers for UWW. Per capita residential consumption is declining due to more efficient appliances and fixtures. Thus, there is no justification for additional labor expense to be borne by the ratepayers. Exhibit 171 shows virtually no growth in Average Day Demand for the next five year for both companies.

No Remedy for Ratepayer Relief when Audit of M&S Company Finds Excessive or Incorrect Charges

There is no remedy if the audit of the M&S Company fees paid by UWNR and UWW finds excessive or incorrect charges because the JP fails to provide for any level of temporary rates subject to refund.

With Your Honor's indulgence, reprinted here is an excerpt from the Municipal Consortium's Initial Brief in the UWNRY rate case on the subject of M&S Company fees. Since the same M&S Company provides the same type of services to UWNRY and UWW, this passage is equally appropriate here.

United Water's Management & Services Company ("M&SCo") is a wholly owned subsidiary that provides various services such as administrative, finance and legal to all United Water North American affiliates – both regulated utilities and non-regulated

businesses. The M&S fees that UWNY pays to M&SCo "represent 14% of total historic test year O&M expenses." Tr. 1085.⁴ Staff found that the \$4.272 million adjustment to rate year expense proposed by UWNY to be excessive citing four main reasons:

(1) the Company cannot explain or support the substantial increases in M&S fees in recent years; (2) Staff has found a number of charges that were incorrectly included in the historic test year; (3) the allocation of general and administrative costs from the M&S Company unfairly allocates costs to the regulated affiliates;; and (4) the Company's use of wage increases to forecast M&S fees is inappropriate.

Tr. 1086 to 1087.

Referring to UWNY's

response to IR Staff-13 (AAE-4), M&S fees charged to UWNY increased 13% from 2011-2012 and 15% from 2012-2013, while inflation during these years was 2.1% and 1.7% respectively. Additionally, in the joint proposal from the Company's last rate case, Case 09-W-0731, the Company was allowed \$2.919 million for the rate year ending August 31, 2013, which is \$1.0 million, or 35% less than what was charged in the historic test year.

Q. Was the Company able to explain these increases?

A. No, despite numerous Staff IRs, the Company has been unable to provide an explanation.

Tr. 1087. Furthermore, when Staff delved into individual charges, the following were found:

1. double charge for National Association of Water Company dues. Tr. 1093.

⁴ Transcript references refer to the transcripts in Case 13-W-0295, the UWNY general rate case that was fully litigated and decided by Commission Order.

2. *Costs incurred prior to the historic test year but not normalized out of the cost of service. Tr. 1094.*
3. *Costs incurred for individual affiliates that were charged to all affiliates, e.g., hotel charges in Idaho and Massachusetts and a "breakfast with New Jersey Commissioners." Tr. 1095*
4. *Cost for a "wives breakfast". Tr. 1096.*
5. *Cost for a restaurant of \$2,340 that included \$996 in alcohol. Tr. 1096.*

As Staff testified, "Ratepayers should not have to bear the cost of alcoholic drinks." Id. All of the foregoing charges that were incurred for specific affiliates should not be charged to all of the affiliates. Staff noted that the M&S Services Agreement requires that charges "shall be based on actual time spent". Tr. 1095. Staff further went on to note:

Nowhere in the M&S agreement, or in the Company's accounting policies, does it state that senior level employees should just charge their time and expenses across all entities.

Tr. 1096. Staff then proceeded to completely debunk the "reasons" UWNY provided to rationalize the huge M&S expenses. See Tr. 1096 to 1100.

Finally, Staff proposed a conservative adjustment to reduce M&S fess by \$1.467 million. The key to Staff's adjustment is the use of the rate year allowance from the prior JP, rather than the unsubstantiated and bloated costs in the historic test

year. Tr. 1101. However, Staff did not stop with its M&S adjustment, but offered some comments and observations. This includes the lack of transparency of the allocated costs. Staff explained:

There are three types of costs that are allocated from the M&S company: payroll, fringe benefits and other departmental costs. Payroll is charged to various affiliates based on work that the employee performed during that pay period and fringe benefits are then loaded onto these payroll allocations. Departmental costs are totaled and then allocated to various affiliates based on the amount of payroll allocated to each one during the time period. This makes it extremely difficult, and in some cases perhaps impossible, to determine how any particular invoice was actually charged to affiliates.

Tr. 1102 to 1103 (emphasis added). If it is impossible for Staff after a concerted effort to determine how a particular invoice was charged, then it is obvious such charges should not be included in rates. Said another way, the Company has failed to satisfy its burden of proof.

Staff also observed that with respect to M&S fees, UWNY lacks oversight of these costs.

As previously discussed, the Company seems completely unaware of what is actually causing these costs to increase. Considering that the M&S fees represent almost 15% of total O&M expense, this lack of understanding is quite worrisome. Additionally, from my very limited review of the charges, I found a number of examples of erroneous charges, further supporting the notion that there is a lack of oversight of these costs.

Tr. 1103. Again, this is a failure of UWNY to carry its burden of proof. Rates cannot be set based on such unproven charges.

Finally, Staff observed that the Cost Allocation Manual is

inadequate in that it provides only "a very general description of the allocation process. The lack of a comprehensive document clearly explaining the various allocation processes is needed to ensure accuracy and consistency." Tr. 1104.

If as Staff observes the allocation process is not-transparent, not properly overseen and without a comprehensive policy guide, then how can it be said that these charges support just and reasonable rates? On the contrary, these observations support just the opposite conclusion -- these charges do not provide support for just and reasonable rates. UWNY has not borne its burden of proof with respect to M&S charges.

Staff then makes six recommendations that the MC fully supports.

(1) Develop a cost accounting manual that explicitly and thoroughly explains the allocation process and how all types of charges are accounted for; (2) Improve transparency by ensuring that transactions can be traced from incurrence at the M&S Company through the allocation process and to a bill for UWNY; (3) Retain documentation for each non-payroll transaction supporting its basis of allocation; (4) Modify the three factor formula to include more appropriate, unbiased data that eliminates cross subsidization; (5) Complete benchmarking studies to ensure that buying services from the M&S company is the most cost effective alternative for UWNY; and (6) Periodically analyze charges to UWNY to be able to explain increases in charges with specific reference to type of cost and/or department charged.

Tr. 1104 -- 1105.

The MC would like to add a seventh recommendation -- in the interim, that 50% of all M&S charges be translated into revenues

and be made temporary and subject to refund. This amounts to approximately \$1.4 million that should be made temporary and subject to refund. The entire M&S constellation of charges, both direct and allocated need to be audited based on the problems detected by Staff's random audit in this rate case of merely a handful of expenses. Without such a procedure, the ratepayers are forced to pay for unproven, undocumented costs and UWNY will have, in effect, been rewarded for its managerial failure in this area.

This approach is exactly what the Commission did with National Grid's Niagara Mohawk Power Corporation in Case 10-E-0050. There the Commission was confronted with all sorts of allocation errors from the service company. So the Commission made \$50 million subject to refund until it could get to the bottom of what turned out to be a very complex and time-consuming accounting project. This is exactly what should be done here with UWNY in order to protect the ratepayers.

Even the utility's own internal audit raised flags:

OTHER AUDIT OBSERVATIONS

1. The methodology has not changed since 1974 when the M & S agreements were formed. Management should consider reviewing the cost allocation methodology to determine if it is still appropriate and that it adequately captures all costs associated with the regulated business segment, which can eventually be recaptured in rate cases.
2. M & S billings primarily rely on the accuracy of employees reporting their time in PeopleSoft. It is recommended that a document describing the allocation

project codes in PeopleSoft's time system be provided to all M & S employees so that they can accurately charge their time to the correct allocation code(s).

Exhibit 158, page 8. The UWNY Order addressed Other Audit Observation number 1. But what is troubling is the observation number 2 clearly reveals that the audit team found there were inaccuracies in reporting time. And those inaccuracies must have been substantial. Why else would the audit team recommend that the allocation codes "be provided to all M&S employees so that they can accurately charge their time to the correct allocation code(s)"?

Finally, no studies have been done to compare whether outside contractors would be less expensive. Exhibit 165.

The JP is deficient for not making some level of rates temporary and subject to refund to protect the ratepayers against excessive, inappropriate or just plain wrong charges, e.g., from the internally reported time keeping issue.

Depreciation Orders or Studies Do Not Support Depreciation Expense

When asked to provide the case number for the Commission approved depreciation rates by water plant account, the response was as follows:

Regarding UWNR, the Company is unable to identify the case number and effective date for its current depreciation rates at this time. Please refer to Staff-71 MVH-4 Attachment 3 for a listing of the current depreciation rates. With respect to UWWC which was acquired by United from Aquarion Water in 2007, the Company is

unable to determine the case number and effective date at which its depreciation rates were approved by the Commission. Please refer to Staff-71 MVH-4 Attachment 2 for a listing of the current depreciation rates. In addition please refer to Attachment 3 for a schedule acquired from Aquarion that indicates the depreciation rates being used by the predecessor company. (emphasis added.)

Exhibit 149. Depreciation is a substantial component of expense, at \$6.8 million for both companies in Rate Year 1 (See JP Appendix 6), and the inability of either company to provide the basis for the expense supported by Commission order constitutes a failure to meet its burden of proof. Even more troubling is the fact that the companies cannot even produce depreciation studies:

In order to fully respond to the request, information from the Company's last depreciation study is required. Unfortunately, the last study for UW New Rochelle is very old and cannot be located. The UW Westchester study was not received when Aquarion at acquisition (sic).

Exhibit 139.

Finally, given this state of affairs, the JP does not even require the companies to perform a depreciation study for its next rate case or within a certain period of time. The MC submits if the companies do not have access to in-house expertise to perform a depreciation study then they should go out and hire an expert. That money would be better spent than on a rate of return expert who uses methodologies wholly unacceptable to Staff and the Commission.

Non-Revenue Water Continues at Excessive Levels

There are no goals or deadlines to direct the reduction of non-revenue water ("NRW"), nor are there any penalties for not achieving those results (assuming they existed). For the test year (twelve months ended June 2013) the NRW for UWNR was 21.86% and for UWW it was 25.23%. Exhibit 172.

It is clear that UWNR's and UWW's own consultant established that 15 to 18% NRW was a reasonable and achievable goal in two separate reports. Exhibit 160. And it is not just the waste of water that is of concern. It is the cost of that waste to the ratepayers.

The companies provided a guesstimate of how much NRW would decrease when monthly billing was initiated. That guess is a tiny 0.5% or a revenue reduction of \$102,665 for UWW and \$257,485 for UWNR. See Exhibit 148. Imagine if the upper end of the Halcrow recommendation was achieved of 18% NRW.

For UWW the revenue requirement reduction would be
 $(\$102,665 / .5 \times (25.32 - 18)) = \$1,503,015.60.$

For UWNR the revenue requirement reduction would be
 $(\$257,485 / .5 \times (21.86 - 18)) = \$1,987,874.20$

This would represent a combined revenue requirement reduction of almost \$3.5 million. At the 15% level these revenue requirement reductions grow larger.

For UWW the revenue requirement reduction would be

$(\$102,665/.5 \times (25.32-15) = \$2,119,005.60.$

For UWNR the revenue requirement reduction would be

$(\$257,485/.5 \times (21.86-15) = \$3,532,694.20.$

This would represent a combined revenue requirement reduction of over \$5.6 million annually – almost eliminating any need for a rate increase. Given that so much money is being wasted on a leaky system, there has been no analysis submitted in this proceeding that shows how much it would cost to reduce the NRW, nor is there any cost benefit analysis to show where the optimum investment lies given that it is impossible to drive NRW to zero.

This failure to do a cost benefit analysis on the capital costs to reduce NRW versus the savings in purchased water expense demonstrates the UWNR and UWW are not being managed economically and efficiently. Therefore, the companies should forfeit any rate increase.

The JP Uses a Fictitious Federal Income Tax Rate

The tax rate used is based on a merger of the companies, but the rates are based on continuing as separate rate districts. This is fundamentally inconsistent. It is also quite unusual, if not unprecedented, that the ratemaking formula uses an artificial effective tax rate for the incremental revenue requirement rather than the rate set forth in the IRS Tax Code. In the past the Commission has set rates using the

marginal tax rate. The JP offers no precedent on using an effective tax rate for the merged companies but setting rates separately for two rate districts.

The imputed merger savings are far too small to satisfy the Commission's precedent.

According to Appendix 1, page 1, of the JP, the combined revenues of the merged companies as adjusted is \$62,524,297. After the JP's increase in Rate Year 1, those revenues rise to \$69,334,532. The merger savings of \$182,783 represent 0.26%. This negligible level of savings is not comparable to any other mergers approved by the Commission in recent memory.

There is no adjustment for the Fact the Companies do not Spend the Outreach and Education Budget

As shown on Exhibits 135 and 138, the companies do not spend their O&E Budget. The JP does not reflect this underperformance and thereby provides a windfall to the shareholder.

The JP Provides for Full Recovery of Excess and Wasteful Rate Case Expense

The JP provides for full recovery of excessive rate case expense, including return on equity testimony that has never been accepted by the Commission. The projected rate case expense for UWNR is \$465,000 and for UWW, \$210,000 for a total of \$675,000 that will be amortized with a return on the

unamortized amount over the three years of the rate plan. Exhibit 140. Thus, the total cost to the ratepayers will be significantly higher than the arithmetic total over the three years.

Requiring ratepayers to indemnify the companies for excessive and wasteful rate case expense is not in the public interest. Ms. Ahern received \$40,000 in the UWNYS rate case and now another \$30,000 for essentially the same testimony that has never been accepted by this Commission. Exhibit 136.

In her testimony at page 18, Ms. Ahern claims enhanced financial risk due to a capital structure that does not exist. "Financial risk is the additional risk created by the introduction of senior capital, debt and preferred stock, into the capital structure." There is only one problem with this testimony. "...neither United Water New Rochelle nor United Water Westchester have any senior capital, debt or preferred stock on their balance sheets." Exhibit 143. So the perceived financial risk Ms. Ahern finds is non-existent.

The Rate of Return Provided in the JP is Excessive

The JP provides the companies with an overly generous return on equity of 9.2%. There are essentially two reasons why such a return is not in the public interest. First, it has been established in UWNYS that management is not operating in an efficient and economical manner – that is a precondition to a

rate increase. Second, the low business risk facing the companies does not justify a return comparable to the recent Con Ed award for its electric, gas and steam units.

In any event, given the fact that financial risk has been ameliorated by the fact there is no senior capital, debt or preferred stock and the fact that Ms. Ahern does not understand how S&P ranks the business risk (country risk, industry risk and competitive position), undermines the credibility of her testimony. See Exhibit 147. It should be given no weight in the consideration of what is a reasonable rate of return. The only competent rate of return testimony is that offered by Staff – 8.71%. See Exhibit 133, Staff Finance Panel at page 8. Accordingly, the JP's 9.2% return on equity is not supported and not in the public interest.

The Companies Failure to File for Economic Obsolescence Award is Further Proof that the Companies are not Being Managed Efficiently and Economically

The companies failed to file for economic obsolescence adjustments thereby increasing rates in past years. The JP provides no remedy for this gross imprudence other than to adjust upward slightly the actual EO awards obtained. Exhibit 169. The MC recommends a prudence investigation into this gross negligence that should also include the companies failure to pursue ad valorem tax refunds – discussed *infra*.

There is no Justification for the Equity Ratio Used in the JP

The JP increases the equity ratio to 47% (from 45%) without justification and that increase is not reflected in what should be a reduction in the return on equity. JP at 9. S&P declares that these companies enjoy excellent (minimal) business risk.

The JP Unnecessarily Requires Compliance with 16 NYCRR § 503.8

Since these companies have never complied with 16 NYCRR § 503.8, the JP now requires compliance. Exhibit 152. This is just bad policy since it implies that the Commission's regulations are not mandatory but merely advisory unless agreed to in a JP.

Purchase Water Costs are Excessive because NRW is Excessive

Purchased water expense is excessive due to excessive NRW. Unlike UWNY where there is some attempt to incentivize the company to reduce NRW by only allowing production costs at the 18% level, here all NRW is included, thus providing no incentive to control NRW. See Exhibit 153. There will be no improvement in NRW under this JP because it is deficient in not providing for a plan of action to address this hugely wasteful situation. Getting NRW under control in accordance with the recommendation contained in the Halcrow reports (see Exhibit 160 attachments) can practically eliminate any need for a rate increase.

The JP Does Not Provide for the Capture of Revenues from Other Municipalities Who May Seek Sewer Billing Services

While it may not be able to predict which of the municipalities may come forward to seek sewer-billing services from the companies, the fact that Port Chester (see Exhibit 155) has done so should indicate that such potential exists. Yet the JP does nothing to capture the benefit in any way for the ratepayers that have essentially paid for the companies' billing infrastructure. This is another reason why the JP does not satisfy the public interest standard.

Special Ad Valorem Taxes -- Even More Evidence that these Companies are not being Managed Efficiently and Economically

The companies did not pursue refunds of special ad valorem taxes for garbage services upon mass property assets, even though other water utilities have successfully achieved refunds. In fact, like the EO filings, these companies have not even explored the possibility of such tax refunds or reductions. Nor did they pay under protest. Exhibit 156. This is yet another reason to deny these companies any rate increase.

The JP Provides for No Reduction in Uncollectible Expense after Moving to Monthly Billing

That the JP provides for no reduction in uncollectible expense moving to monthly billing is simply illogical and wrong. The companies respond that the write-offs are already low and

"[t]o reduce that amount would be unrealistic." Exhibit 162.

Here is another example of the companies favoring the shareholder over the customers.

The JP Fails to Address the Explosion of Outside Service Costs

Outside service costs, not provided by the M&S Company, have increased by 121.29% to \$499,000 from \$225,000. Exhibit 168. The JP does not address this drastic increase in cost nor attempt to ferret out the root cause. All it does is reduce the \$499,000 by \$62,000 (see JP, Appendix 1, page 9 of 85) to \$437,000. This is still a 94.2% increase that will now be locked into rates for the next three years.

United Water's Organizational Structure is Too Top Heavy and Too Expensive for Ratepayers

The JP accepts as a given the organizational structure of United Water. Even a casual inspection of Exhibit 170 should cause one to consider what the cost of that management does to the rates. Yet there is no analysis or even thought to whether such management overhead contributes to the provision of water service for UWNR and UWW.

The JP Fails to Provide for Ratepayer Benefits in the Event that there is an Expansion of the Franchise Area

Exhibit 176 reveals that the companies "... have been engaged in discussions surrounding the possibility of acquiring customers from systems that are contiguous to the current

franchise area." Exhibit 176. The company also admits that there may be potential to "lower existing customer rates as well" by 2014. Id. Why does the JP not reflect any provision to capture such potential rate reductions for the ratepayers? Rather, in the event of a franchise expansion, all benefits will flow to the shareholder until the next rate case -- at least three years away if the JP is approved.

The Annual Bill Impacts are Excessive

The JP shows public fire service for UWNV going from \$82.72 to \$97.25 in Rate Year 1 and \$102.42 in Rate Year 3. That is a 17.6% increase in the first year and a 23.8% increase by rate year 3. This is absolutely intolerable and not in the public interest. What is there about existing public fire hydrants that have escalated so rapidly in cost to justify such over the top increases compared to private fire protection that does not increase at all? See Appendix 4, page 34 of 39. Nowhere is this discrepancy explained. Nor is the much lower rate paid in UWN service territory for public hydrants. Id. page 35 of 39.

CONCLUSION

The JP is not a document that balances the interests of UWNV ratepayers with the shareholder. Rather it is hugely favorable to the shareholder providing no benefits to UWNV

ratepayers. The many omissions discussed in this brief should make the JP's acceptance untenable.

The MC requests that Your Honor recommend that the JP should not be approved by the Commission.

Respectfully submitted,

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