

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

*corresp*

## PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN  
*Chairman*  
THOMAS J. DUNLEAVY  
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LEONARD A. WEISS  
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DAWN JABLONSKI RYMAN  
*General Counsel*

JANET HAND DEIXLER  
*Secretary*

June 26, 2003

Douglas DiCeglio  
President  
URAC Corporation  
119 N. Park Avenue  
Rockville Centre, New York 11570

Re: PSC Case 02-G-0897 - Petition of URAC Corporation for Declaratory Ruling concerning the Alleged Failure of The Brooklyn Union Gas Company to abide by 16 NYCRR 13.15(a), concerning consumer complaints

Dear Mr. DiCeglio:

Your letter dated May 20, 2003, to Chairman Flynn advising that you are preparing a mandamus proceeding to compel a decision in the above-captioned matter has been referred to me for a response. To the extent your petition sought a declaratory ruling with respect to the construction of 16 NYCRR § 13.15(a)(1), it has been denied by operation of law, inasmuch as the Commission did not act on your request within sixty days of filing.<sup>1</sup> See State Administrative Procedure Act Section 205; 16 NYCRR Part 8. A mandamus proceeding to compel a decision is therefore unwarranted.

The relevant staff was previously not aware of your petition or of Brooklyn Union Gas Company's response disputing your contentions. It has reviewed the pleadings and does not believe that any further action needs to be taken at this time. The staff view is that while 16 NYCRR § 13.15(a)(1) requires that a complaint be "fairly investigated in a reasonable time," it does not impose a specific time period on the utility. Staff, utilities and consultants have agreed that 60 days is a reasonable time for investigation, but Brooklyn Union is, so far as staff can tell,

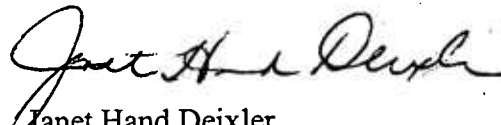
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<sup>1</sup> Your request for a show cause or enforcement proceeding appears not to comply with procedural requirements for a request for a declaratory ruling. 16 NYCRR § 8.1(a)(2) provides that "declaratory rulings may be issued with respect to ... whether any action by the Commission should be taken pursuant to a rule." That language does not apply to requests for a show cause or enforcement proceedings, inasmuch as those proceedings are an exercise of Commission discretion, unreviewable in the courts, and therefore not "taken pursuant to a rule."

Douglas DiCeglio  
June 26, 2003  
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making a good faith effort to comply with that agreement. In particular, the utility has informed staff that it has adopted a practice of advising consultants after 45 days if the utility requires more than 60 days. Other consultants have not complained about the time Brooklyn Union takes to respond. In the future, if you believe there are excessive delays, you should feel free to complain to the Office of Consumer Services.

Very truly yours,

  
Janet Hand Deixler  
Secretary

cc: Cynthia Clark, Esq.  
KeySpan Corporation  
1 MetroTech Center  
Brooklyn, New York 11202-3850

Jean Lowe  
Office of Consumer Services  
Department of Public Service  
One Penn Plaza  
New York, New York 10119

*Urac Corp.*

119 N. Park Avenue, Rockville Centre, NY 11570

(516) 536-4545 - fax (516) 594-9413

[ddiceglio@uraccorp.com](mailto:ddiceglio@uraccorp.com)

PUBLIC SERVICE COMM.  
RECEIVED

2003 JUN 13 PM 4:34

June 11, 2003

02 90897

STATE OFFICE  
ALBANY, N.Y.

Daniel D. Hogan  
Director of Regulatory Reform  
Governor's Office of Regulatory Reform  
P.O. Box 2107  
Albany, NY 1220-0107

Re: Petition for Declaratory Ruling  
Failure of NYS Public Service Commission to abide by 16 NYCRR 8.2(e)

Dear Director Hogan:

In accordance with State Administration Procedures Section 204, Petitioner requests a review by your office and a ruling thereon, regarding the New York State Public Service Commission's (PSC) failure to abide by 16 NYCRR 8.2 (e).

By Petition dated July 2, 2002 to the PSC, Petitioner requested a review by that organization of Brooklyn Union Gas Company's failure to abide by 16 NYCRR 13.15 (a).

Copies of all correspondence are enclosed.

16 NYCRR 8.2 (e) states:

**Where a petition seeks declaratory ruling with respect to whether an action should be taken pursuant to a rule, the ruling or a statement declining to rule will be issued within 60 days of the date the petition is received.**

After not receiving a ruling within the required time period, Petitioner attempted, by letters dated February 20, 2003 and March 20, 2003, to persuade the PSC to render a

Director Daniel Hogan  
June 11, 2003  
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decision. However, all Petitioners attempts have fallen on deaf ears. As such, Petitioner in the instant proceeding is requesting intervention and a ruling on the PSC's actions in this matter.

Kindly advise the undersigned of the Office of Regulatory Reform's decision to this petition.

Sincerely,



Douglas DiCeglio  
President

DDC:wp  
Enc.

C: PSC Chairman William Flynn

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**Urac Corp.**  
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(516) 536-4545 - fax (516) 594-9413  
ddiceglio@uracorp.com

PUBLIC SERVICE COMMISSION  
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FEB 24 2003

*corresp*

February 20, 2003

FILES  
ALBANY, N.Y.

Ms. Janet Deixler, Secretary  
State of New York  
Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223

*OTG Files' 02G-0897  
Copies to: J. Feinberg*

Re: 02-G-0897  
Petition for Declaratory Ruling  
Failure of Brooklyn Union Gas Company to abide by 16 NYCRR 13.15(a)

Dear Secretary Deixler:

Petitioner has been patiently waiting the Commission's decision in the above referenced matter. Regulations suggest that a decision would be made within sixty (60) days. Whereas sixty (60) days has past some time ago we request that the Commission address this Petition.

Petitioner is seeking to correct the utility's delay in responding to Urac Corp. represented complaints. Delaying a PSC ruling on this Petition is unfair and fails to consider the reason for the declaratory ruling process. Prompt response to a concern raised in this Petition is the reason for this process.

Please respond within thirty (30) days.

Sincerely,

  
Douglas DiCeglio  
President

DDC:wp

C: Cynthia Clark

**Urac Corp.**

119 N. Park Avenue, Rockledge Centre, NY 11570  
(516) 536-4545 - fax (516) 594-9413  
[ddiceglio@uracorp.com](mailto:ddiceglio@uracorp.com)

May 20, 2003

**RECEIVED**

**MAY 28 2003**

**PUBLIC SERVICE COMMISSION  
OFFICE OF COUNSEL**

**RECEIVED**  
**MAY 23 2003**  
**ALBANY, N.Y.**

Chairman William Flynn  
State of New York  
Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223

Re: PSC Case 02-G-0897  
Petition for Declaratory Ruling  
Failure of BUG to abide by 16 NYCRR 13.15

Dear Chairman Flynn:

By submission dated July 2, 2002 Urac Corp. filed a Petition for a Declaratory ruling in accordance with 16 NYCRR 8. Regulations require that a decision on this type of petition be rendered within sixty (60) days (16 NYCRR 8.2 (e)).

Being patient we requested the status of the decision by letter dated February 20, 2003. Our request has been ignored to this day.

It is remarkable that the petition, which seeks penalties against BUG for failure to respond to complaints within the allotted time period, is now being stalled in the Public Service Commission. Why are the laws of this state being ignored?

I can not express to you my feelings on this issue. The PSC is suppose to resolve these matters one way or the other. They are not supposed to let a Petition sit for almost a year. We are in the process of preparing a mandamus to compel a decision in accordance with CPLR Article 78. Do you really want to escalate this matter to Supreme Court in Albany? Is it really necessary? When is the Public Service Commission going to take responsibility for its actions or in this case inaction's?

You can resolve this by directing your staff to render a prompt decision. Or, your staff can respond to Albany Supreme Court on the merits why they are withholding a decision.

Sincerely,



**Douglas DiCeglio**  
President

DDC:wp

C: Cynthia Clark

**Urac Corp.**

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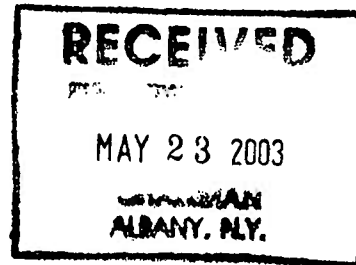
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MAY 28 2003

PUBLIC SERVICE COMMISSION  
OFFICE OF COUNSEL



Chairman William Flynn  
State of New York  
Department of Public Service  
3 Empire State Plaza  
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Douglas DiCeglio  
President

DDC:wp

C: Cynthia Clark