August 5, 2012

Garry Brown, Chair
New York State Public Service Commission
Three Empire State Plaza, 14th Floor
Albany, NY 12223

Re: Reconsideration of 06-W-0131 Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Incorporated and United Water South County Inc. due to unforeseen circumstances and newly discovered information.

Dear Chairman Brown:

As an original stakeholder in the matter of: 06-W-0131, I request a reopening of the proceeding due to new information and unforeseen circumstances. The signatories have a responsibility to consider this new information and to decide whether the Joint Proposal of United Water New York Incorporated for Approval of a Certificate of Merger, with United Water New York Inc. being the Surviving Corporation, should be amended or vacated.

When I joined the petition to the Public Service Commission (hereinafter “PSC”) to require United Water New York (hereinafter “UWNY”) to provide increased water supply to Rockland County, it was based on available data at that time. Since then previously undiscovered information and several unforeseen circumstances have altered the data significantly. Without a proper reevaluation based on accurate data, a water supply project could be approved that could be to the detriment of UWNY’s Rockland ratepayers.

These unforeseen circumstances along with undiscovered information raise questions as to whether the Joint Proposal (hereinafter “JP”) is in the interest of UWNY ratepayers. As a signatory of the JP I have a responsibility to see that the decision be fully investigated and responded to because this new information impacts the JP and UWNY’s proposal for a desalination plant, instead of its alternatives. Without such an investigation Rockland could find itself with a water supply project that could turn out to be:

1. Unsuitable for Rockland given the county’s real usage needs, which due to unforeseen circumstances and newly discovered information, might have been overestimated;
2. The most costly for ratepayers because its alternatives weren’t given adequate consideration due to UWNY’s failure to provide transparent, comparative financial data for all alternatives.

In order to protect Rockland ratepayers, I ask the PSC to earnestly examine four areas of concern in light of newly discovered information and unforeseen circumstances.
1. NEWLY DISCOVERED AND UNFORESEEN RISKS TO RATEPAYERS FROM A FINANCIAL ANALYSIS OF ALTERNATIVES THAT WAS NOT PREPARED IN ACCORDANCE WITH INDUSTRY STANDARDS.

Pursuant to XXVIII, it is required that the JP be interpreted and implemented to best serve the public interest and to protect customers from being detrimentally impacted from economies of scale and operational inefficiencies. Instead, and pursuant to XXVIII§ (3) the Merger Transaction will not serve the public interest and could cause customers to be detrimentally impacted from economies of scale and increased operational inefficiencies. The project as currently proposed would raise rates by a minimum of $300 a year at United Water’s admission; however outside estimates run as high as $500 for the first year alone.

As a signatory to the agreement I am troubled that UWNY’s implementation of the JP contradicts the intent and purpose of the JP, as UWNY failed to provide a transparent cost benefit analysis of the various alternatives.

Ed MacMullan, Senior Economist for ECONNorthwest, M.S. Agricultural Economics and International Agricultural Development, University of California at Davis, B.S. Soil Science, Oregon State University found that the cost analysis reported in the Draft Environmental Impact Statement (hereinafter “DEIS”) “does not conform to commonly-accepted standards for measuring and describing cost-effective comparisons among competing alternatives. The National Research Council and other industry experts provide detailed guidelines for conducting the types of cost-effective analyses at issue in the DEIS.” (Report is enclosed). Mr. MacMullan further said of UWNY’s DEIS:

1. The almost complete lack of transparency and documentation regarding the data, assumptions, and analytical methods used to generate the cost results. By excluding such basic details, the authors of the cost sections of the DEIS report results that lack credibility as a source of information for decision makers and stakeholders.

2. The DEIS authors do not use consistent measures of cost effectiveness across all alternatives. Measuring the cost of the preferred alternative using the method applied to the wastewater reuse alternative shows that the proposed project is not necessarily the most cost effective option.

In light of this unforeseen circumstance, I ask the PSC to require an independent financial analysis of alternatives that is in conformance with industry standards.

Since the JP was adopted, UWNY’s cost estimates have increased from $98 million dollars to $139.2 - $189 million dollars. These costs reflect a one-time expenditure without a realistic estimation of energy costs over the long-term. According to many experts, due to intensive energy use, desalination could, over time, cost UWNY’s residential and commercial ratepayers in Rockland more than other alternatives. I call on the PSC to conduct a transparent, exhaustive study of the alternatives, comparing long-term costs of each, in order to protect Rockland ratepayers.

A paper from the New York State Water Resources Institute, Department of Earth and Atmospheric Sciences, Cornell University titled, “Desalination in northeastern U.S.: Lessons from four case studies,” Sridhar Vedachalam and Susan Riha (herein after “Vedachalam and Riha”) offers the following explanation of why flawed alternatives analyses are apt to occur cases such as UWNY’s Haverstraw Water Supply Project.

“Before implementing large capital projects that could have significant impact on the environment, most states require an environmental impact assessment (EIA) report to be
filed with the state environmental regulatory agency. In addition to estimating the costs and benefits of implementing the capital project, the EIA report also requires the project executor to identify alternative options and comment on the viability of those options. Depending on the location, alternatives to desalination could include reuse of treated wastewater, exploring additional surface and groundwater sources, capturing storm water runoff, and implementing conservation through water-efficient fixtures, leak detection and full-cost pricing of water. However, the inherent conflict of interest in a private or public entity working to identify alternative sources that could undermine the time and financial commitment made towards the principal option being considered lends itself to often poorly evaluated alternative sources that could undermine the time and financial commitment made towards the principal option being considered lends itself to often poorly evaluated alternative options.

Vedachalam and Riha’s point goes to my concern about nontransparent data submitted by UWNY in its DEIS. It is the PSC’s duty to represent the public in cases where project selection could be marred by conflicts, which, as Vedachalam and Riha caution, can lead “to often poorly evaluated alternative options.” This amounts to a disservice to ratepayers. The PSC should require that all of UWNY’s data regarding alternatives be transparent; requiring transparent and realistic data could prevent detrimental economic impacts to the county. Moreover, ratepayers deserve a full airing of the data to learn how UWNY arrived at the desalination alternative.

In order for the ratepayers to be properly served, there must be a transparent process by which alternatives, or a combination of alternatives, are to be considered in any proceeding. As cited above, these often include: treated wastewater, exploring additional surface and groundwater sources, capturing storm water runoff, and implementing conservation through water-efficient fixtures, leak detection and full-cost pricing of water. Not providing a transparent study of the costs of each alternative puts ratepayers at a disadvantage. I find the requirement that all alternatives be rigorously explored as stated in SEQR to be ambiguous. Whose responsibility is it to offer more cost-effective alternatives than the one chosen? Is the public entitled to an exhaustive investigation?

Conservation is one option, which wasn’t seriously analyzed but could yield substantial savings to ratepayers. Since the JP was reached, Rockland County has announced a conservation plan. While experts agree that conservation would not meet all of Rockland’s water needs, consensus is that a range of measures could substantially reduce demand from 1 to 3 MGDs. In their paper “Hurdles to incorporating conservation into long-term water supply planning: a Rockland County NY case study, authors Stuart Braman and Simon Gruber say, “While it is common for regulators to require investor-owned utilities to invest in promoting water conservation, the resulting activity sometimes falls short of genuinely incorporating water conservation into long-term water supply planning.”

UWNY demonstrates little interest in pursuing serious goals that would quantify water savings from conservation. Both in its DEIS and publicly UWNY says, that there are “no clearly identifiable measures of enhanced water conservation or the development of green infrastructure that would reduce the water demand in the United Water system so as to avoid the need for a new water supply project beyond the end of 2015. Therefore, this alternative would not meet the purpose and need for the Proposed Project and is not a viable alternative to the Project.” As Vedachalam and Riha point out, applicants all too often reject alternatives that are not in the interest of the applicant. I would add that some of the dismissed alternatives might possibly be in the best interests of the ratepayers.
Especially perplexing is UWNY's refusal to institute plans to lower peak summer usage. UWNY's reasoning for not doing so seems at odds with information from a study by United States Geological Survey hydrologist Paul Heisig, especially with regard to large users, and the savings an incentive program could have during critical peak use months. UWNY says, "Except for an active ICI (Note: industrial commercial and institutional) program, United Water is currently doing that which could be expected from a privately run water system as compared to similar systems in the northeastern and mid-Atlantic United States." In fact UWNY dismisses benefits of an ICI program. Heisig, on the other hand, says "Disincentives to larger users could net large potential savings, affecting 5.6% of Rockland's water use." Incentives (which I prefer) for large users remain an untapped area that must be explored.

The PSC's strict view of conservation is a concern. PSC ruled, "Theoretical increases or those based on change of operation without physical change are not counted toward satisfaction of the supply increase commitment." I ask that the PSC reconsider and review the case of Brockton, MA where conservation significantly cut demand after a desalination plant was built. According to Vedachalam and Riba: Since the initial plan to build the desalination plant, water conservation measures and water infrastructure improvements have lowered demand to the extent that the city needs very little to none of the desalinated water. Brockton's average water demand dropped from above 12 MGD in the 1990s to around 9 MGDs in 2008, with the peak demand at around 10 MGD (Brian Creedon, personal communication, February 3, 2012). In fall of 2011, less than 1% of the nearly 10 MGD used in the city, came from the desalination plant. At other times, the plant has supplied up to 2.5 MGD to the city, well below the maximum plant capacity."

Again, if a company is unlikely to institute a workable conservation plan that can achieve real savings, whose role is it to require that such plans are instituted? Bramin and Gruber ask, "How did the water conservation success story of the '80s and '90s (Note: in Rockland) turn into a perceived water conservation failure of the 21st century? Looking back, the flurry of activity in the '80s and '90s appears to be traceable to aggressive action by New York State, through the PSC and the DEC." It is in the interest of Rockland ratepayers that the PSC be firm about conservation efforts before—not after—a water supply project is completed. Not doing so could place undue and unnecessary financial hardship on UWNY's Rockland customers.

2. UNFORESEEN CIRCUMSTANCES AND NEWLY DISCOVERED INFORMATION THAT COULD IMPACT CALCULATION OF ROCKLAND'S WATER SUPPLY NEEDS AND THUS ALTER THE CHOICES OF WATER SUPPLY ALTERNATIVES.

The first two items on this list in particular have resulted in errors in Exhibit 11: Peak Volume Commitments. Each of these can potentially reduce need in Rockland County; a combination of these items could yield a significant enough reduction to redefine scope of what an appropriate water supply option would be for Rockland County.

1. Substantial loss of water through leakage that exceeds the allowable limit.

As recently as July 17, 2012, Lohud (Rockland Journal News) reported 25 percent leakage in United Water's New Jersey pipes, exceeding the permissible leakage rate by 10 percent. Restoring this lost water to Rockland would add roughly .75 MGD, but I defer to the experts in making that calculation. This unforeseen circumstance and newly discovered data must be investigated, in order to serve the interests of Rockland ratepayers.
2. Unauthorized releases to New Jersey.

In 2006, when PSC issued the Joint Proposal, it was unaware of UWNY's unauthorized release of water to New Jersey, which exceeded UWNY's Lake DeForest operating permit, nor was the PSC aware of the fine levied on UWNY by DEC in 2007 for excess releases of water from the Lake DeForest Reservoir that summer. The illegal releases to New Jersey totaled approximately one billion gallons from June through November of 2007. The resulting precipitous drop in Lake DeForest stirred public alarm. Had UWNY acted within its permitted rights, Lake DeForest would have dropped to roughly 76 percent of its capacity, making it likely that most people wouldn't have noticed the much slighter drop. I ask the PSC to recalculate Rockland's water needs based on a history of illegal releases that were documented subsequent to 06-W-0131. This is justified because data from the USGS showed that excess releases from Lake DeForest have been going on for many years. Since this was not an aberrant occurrence, it possibly affected water supply over years, thus raising the average GPD use.

The DEC-issued Lake DeForest discharge permit was formulated to allocate to Rockland County its share of Lake DeForest's water, to protect the Hackensack River ecosystem and to provide New Jersey with its share of the river's flow. That decision didn't authorize current or future water providers to exceed the discharge provisions of that permit. The New York State DEC Lake DeForest Decision of 7-23-1952 (Hackensack v Nyack Water) authorizing the construction of Lake DeForest states, "This Commission has the full power to see that this project is operated solely for the benefit of the citizens of Rockland County. The only benefit to the Hackensack Water Company (now owned by United Water New Jersey) and the people of New Jersey is the incidental benefit of a regulated flow in the river." The PSC and the signatories relied upon Exhibit 11 with regard to Peak Volume Commitments, however due to underreported releases to New Jersey, the calculations showed a need for a larger supply of water than accurate reports indicate; as a result of these under-reported, unauthorized releases, the PSC likely received data based on an artificially created shortfall. Therefore I ask that any decision resulting from that data be reconsidered using corrected data gathered from an impartial source.

3. Rockland County's Comprehensive Plan shows a commitment to conservation measures. Pointed out in more detail earlier, the county's conservation measures being considered should be factored into the overall supply need for Rockland in order to give ratepayers the fairest analysis of alternatives for supplemental supply. Again, water savings would range from 1 to 3 MGDs. The mistake made in Brockton, MA could be avoided here by giving the county time to implement a conservation plan prior to the construction of a nearly $200 million water supply project. While this is not the sole solution, when taken in combination with the other items in item 2., Rockland's available water is greater than believed when this case was decided.

4. Imminent renegotiation of the Rules Curve

The current water discharge curve rule determining the flow of water to New Jersey expires in 2013. The current arrangement requires a release of 7.5 MGDs. A change in this agreement could further alter Rockland County's actual water needs. Operating with inflated or artificial data does not serve the interests of UWNY's Rockland ratepayers.

5. United States Geological Survey Study

In 2005, information provided to the PSC clearly stated that Rockland's ground water was in imminent danger of depletion. Subsequent to the PSC's decision in 06-W-0131,
Rockland County engaged the United States Geological Survey (hereinafter “USGS”) to conduct an assessment of the county's groundwater resources. As I previously noted, that study, released in February 2011, by Paul Heisig, a hydrologist at the USGS, found Rockland’s groundwater supply to be far healthier than originally reported to the PSC in 2005. The percent of recharge to the aquifer was much higher than previously supposed. Therefore, the PSC’s ruling that a new source of water supply be chosen and in place by 2015, could be extended based on this new information. Given the climate that precipitated the petition to the PSC and subsequent engagement of the USGS to conduct a study, this certainly constitutes an unforeseeable circumstance. I hope the PSC regards the higher than expected recharge rate of the aquifer as an opportunity to take more time to investigate the water supply alternatives, in order to protect Rockland from being burdened with a project that could place financial strain on ratepayers.

The Heisig study further found that because the highest demand for water occurs during the summer, any alternative supply project would essentially be a “peaker” plant. It seems excessive to choose the most costly, energy-intensive, water supply option to meet demand that occurs during peak use months. In fact, this is a period when conservation practices can be applied in earnest and have the greatest chance for success. Therefore the county should be given time to implement its plan especially with regard to cutting consumption during peak use months. It would be in the best interests of Rockland ratepayers for PSC to give the county a specified period to give conservation measures a chance.

Pursuant to XXVI Reservation of Commission Authority, I request that the PSC exercise its authority to reopen the Joint Proposal because at the time the Parties initially agreed to the Joint Proposal and rate increases, this unforeseen, new information regarding Rockland County’s groundwater did not exist. Refusing to reopen 06-W-0131 could result in rates that exceed just and reasonable rates for service for safe and adequate service.

6. Removal of Department of Health (hereinafter “DOH) production limits so that Lake DeForest can operate as originally intended, “solely for the benefit of the citizens of Rockland County.”

The United Water Lake DeForest water treatment plant has a capacity of 20 MGDs. However, the DOH currently limits production to an average of 10 MGDs. Evidently DOH has agreed to the increase, and a decision is pending with the New York State Department of Environmental Conservation (herein after “DEC”). While this would not directly expand storage capacity, increasing the amount of treated water would rest the aquifer and well fields, consequently augmenting the county’s overall supply, during high use periods. I call on the PSC to recalculate the county’s need based on increased ability to rest wells as a result of raising the limit on water that can be treated.

Both conservation and raising limits on treated water might well lower Rockland’s demand. Other factors that readjust Rockland’s supply as called for in 06-W-0131 are addressed in item 2. Briefly these include: illegal releases to New Jersey, massive leaks in pipes in New Jersey, and renegotiation of rule curve. As these postdate the PSC’s decision re: 06-W-0131 they comprise unforeseen circumstances and newly discovered information.

As one of the Parties who acknowledged and agreed to the JP, I request that PSC reopen this case to examine the above listed unforeseen and newly discovered information. This is in keeping with PSC’s statutory responsibility and authority to regulate the Company’s rates in the event of unforeseen circumstances or newly discovered information. As is its charge, I request the PSC to ensure that the proposed alternative will not result in rates
that exceed just and reasonable rates for service and will have such a substantial impact upon the range of earnings levels or equity returns envisioned by this JP so as to render the Company's actual return in any rate year unreasonable or insufficient for the provision of safe and adequate service at just and reasonable rates.

3. CHANGE IN ENERGY USE POLICY IS AN UNFORESEEN CIRCUMSTANCE.

Energy use and costs are far greater than specified in New York State's Executive Order 24, which mandates 80% reductions in energy use by 2050 and 15% reductions by 2015. This is an unforeseen circumstance that significantly impacts the JP adopted in 2007 because this desalination alternative would significantly increase energy usage, which counters the intentions of Governor Cuomo and the State to reduce energy usage. The excessive energy needed for the proposed desalination plant would increase greenhouse gas emissions. If the Department of State and the DEC approve UWNYSuez's proposed Desalination Plant it will impede New York State from reaching compliance with Executive Order 24. Leaving ratepayers at the mercy of the volatile energy market in order to obtain potable water is not in their best interest. The PSC should not allow drinking water to be so closely linked to energy supply.

4. PUBLIC OPPOSITION IS AN UNFORSEEN CIRCUMSTANCE; ARTICLE X IS NEWLY DISCOVERED INFORMATION.

According to Vedachalam and Riha, "Public support is crucial for large and innovative infrastructure projects. Lack of public support has caused large projects to fail in the past. Though desalination as a technology has enjoyed public support over certain non-conventional sources such as reused water desalination projects have had a mixed history. The report cites research done in Rockland, by Braman and Gruber. (Please note that I have worked with Mr. Braman; he was not aware of this paper until I alerted him to it.) In their previously cited paper, Braman and Gruber discuss public mistrust of UWNY and the unpopularity of the desalination project. Indeed, an unfunded group of volunteers gathered well over 24,000 signatures in opposition to desalination. UWNY got roughly 1000 signatures from a well-funded mail campaign.

I have received many calls and emails in opposition to the desalination option. None of the contacts have been in favor. The most prevalent objections are the cost. A number are fearful of the proximity of intake values to a nuclear plant, which leaks tritium and other radionuclides.

As mentioned, UWNY has the financial resources to get its message out to the public through a multi-million dollar media blitz, yet a number of ratepayers remain unaware of the issue. It is unfortunate that Article X of the PSC law, which passed last year, does not cover water projects. Stakeholders were at a huge disadvantage. UWNY has blanketed the public with a PR campaign; as with any ad campaign, information is not always exactly accurate. Mailers went to ratepayers stating that desalination is the most cost-effective option, yet this is based on UWNY's nontransparent data analysis that has frustrated so many. Another claim UWNY made was that desalination would be best for business as it would allay fears about limited water supply. Indeed any alternative would accomplish this, as any alternative will supply additional water. What are the guidelines for a utility in disseminating information that essentially sells one option over others?
Finally, distinct from the stakeholders, United Water has the funds to hire lobbyists. By doing its due diligence as I have requested, the PSC can play an invaluable role in protecting the public from conflicts of interest. I rely on your dedication to the mission of the Public Service Commission to reopen this case, conduct investigations needed to provide accurate data, and then make a decision based on all of the new information and unforeseen circumstances. A thorough, transparent investigation regardless of its outcome can go far in reassuring a very skeptical public.

CONCLUSION
The Parties agreed that the Merger Transaction proposed in the Petitioner's February 27, 2006 Joint Petition in Case 06-W-02449 is in the public interest pursuant to the Public Service Law ("PSL") Section 89-h. The Merger Transaction's intent was to serve the public interest to provide that customers will benefit from economies of scale, increased operational efficiencies and service improvements.

In accordance with XI New Water Supply Source and Surcharge clause, I along with the other Parties to the JP agreed that it is in the customers' best interest and in the public interest for the Company to accelerate its development of new sources of supply. However, now that unforeseen circumstances and newly discovered information are known, it is imperative that the PSC reconsider the JP and its commitments. Therefore I am requesting, as a signatory to the JP, that the Commission hold public hearings to consider this important new information and unforeseen circumstance in order to decide whether the JP should be amended or vacated.

Yours truly,

Ellen C. Jaffee

MEMBER OF ASSEMBLY, 95th AD

Cc: Commissioner Patricia Acampora
Commissioner James LaRocca
Commissioner Maureen Harris
Commissioner Gregg Sayre