



New York State Legislature



Rockland County Legislature

July 16, 2013

Honorable Jeffrey Cohen
Acting Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350
secretary@dps.ny.gov

Re: Case 09-W-0731-Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations for United Water New York Inc.

Dear Secretary Cohen:

We have reviewed the comments in the letter from David Stanton, President, United Water New York (UWNY) addressed to you. We offer the following responses.

It appears that UWNY makes two requests of the NYS PSC: 1) to override and, in effect, negate the schedule for construction and operation of the proposed Haverstraw desalination plant and 2) to allow UWNY to file an application to collect a surcharge to recover their development costs for the desalination project. We do not object to the request for the change in schedule since we understand that the design and implementation of the pilot project as requested by NYS DEC had prolonged the environmental review process; in fact we strongly support a thorough environmental review process without shortcuts to SEQRA. However we strongly object to the surcharge United Water has requested; we would like to see an itemized request and all PR and advertising costs related to the \$54 million. We point out that this increase would be in addition to a rate hike the PSC granted in 2010 to cover costs in order to “reduce rate shock.”

Additionally, we are troubled by the tone of the letter, which shows UWNY’s disdain for the environmental review process. As a private company providing a public service, UWNY’s desire to circumvent standard review procedures troubles us when considering its role in Rockland County and the need to protect the thousands of ratepayers served by the corporation. UWNY made a similar argument in the DEIS, when it claimed to be exempt from the 2010 Smart Growth Infrastructure Policy Act, because it is privately

held. Private corporations that provide a public service have a special obligation to respect the public review process as a protection for its ratepayers.

Below, we have highlighted sections of the letter, which raise issues followed by an explanation of our concerns.

1. Lack of Proceeding - Page 2 – “Although Section XI(3) of the 2006 Joint Proposal (attached to and part of the 2006 Rate Order) allowed the PSC to institute a proceeding on United Water’s January 2007 filing selecting the Proposed Project, the PSC elected not to do so, and no party or other person requested such a proceeding, either. Moreover, United Water’s January 2007 filing was widely distributed, including to all the parties to the 2006 Joint Proposal, none of which objected to United Water’s selection of the Proposed Project.”

These statements imply that there was tacit agreement about project selection among all parties or persons; in fact, at that point the proposed project lacked sufficient information to request a proceeding or to have an informed opinion. UWNYS’s January 2007 filing (the above referenced document) is the first public mention of the proposed desalination project; it is a total of 13 pages of which 2 pages are devoted to a barebones description of the project. The filing explains, “It is important to note that this document is intended solely to respond to the above referenced directive of the Commission. The Project Description will initiate the extensive approval process, which will review and address matters that are beyond the scope of this document. (“Long Term Water Supply Project United Water New York, January 2007, Prepared in compliance with Commission Order in Case No. 06-W-0131 Issued and Effective December 14, 2006 by the New York State Department of Public Service,” page 3). Mr. Stanton’s letter notwithstanding, UWNYS was aware of the limited discussion of the project.

2. Issuance of January 2008 DEIS – page 2

Although United Water New York issued the draft environmental impact statement (DEIS) in January, 2008, the NYS DEC rejected the DEIS, saying it lacked sufficient information. The DEC required UWNYS to conduct a pilot project and to revise its DEIS. NYS DEC did not issue a Notice of Complete DEIS and Acceptance until January 13, 2012. The public comment period began January 18, 2012. During the four-year gap, the public began to respond negatively, as residents learned more about the project. They objected to the DEIS’ lack of transparency in the alternatives analysis; its failure to comply with industry standards (both well documented by ECONorthwest report) and raised environmental concerns regarding the impact on Haverstraw Bay; the need for the project given the U.S.G.S. 2011 study; the purity of the water downstream from the Indian Point Nuclear Power Plant; and the proposed increase in customer rates; among other issues.

While UWNYS had years to create and then revise the report, the public had less than three months to respond. There was no funding for individuals or stakeholder groups to conduct their own analyses as there would have been if water companies were subject to rules under Title X of the New York State Energy Law. UWNYS had a tremendous

advantage. As indicated in their own appendix, UWNY spent thousands upon thousands of dollars on advertising and experts; the stakeholders had but limited resources.

3. “The proposed project has not significantly changed since the issuance of the January 2008 DEIS.”

This is all the more reason that public officials must advocate for the best alternative for those they serve. The fact that the DEIS hadn’t changed significantly despite objection shows UWNY’s failure to understand the intent of SEQRA as insuring a robust public discussion. Instead we have had a one-sided public relations campaign.

One of our most significant concerns is UWNY’s insistence on this alternative and according to experts (ECONorthwest and others) a failure to apply standard analytical methods to arrive at an honest conclusion. What we’re seeing is a pattern best described in the paper by S. Vedachalam, S.J. Riha, Desalination in Northeastern U.S.: Lessons from Four Case Studies, Desalination.* Its authors found:

“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.*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 options.*

We are afraid this has indeed been the case throughout the SEQRA process for the Haverstraw Water Supply Project. The analysis conducted by ECONorthwest confirms this suspicion when it states: “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.”

3. Water Supply Crisis – “In light of the upcoming water supply crisis in Rockland County acknowledged in the 2006 Rate Order,” page 2

What is the basis for UWNY referencing a water supply crisis? In his 2010 U.S.G.S. study entitled, “Water Resources of Rockland County, New York, 2005-07, with Emphasis on the Newark Basin Bedrock Aquifer,” Paul M. Heisig concludes that the County has a water issue with high peak demands during the summer; he does not describe Rockland water supply as a crisis.

Furthermore, UWNY in the draft FEIS states this supply project is to meet projected population growth and is not immediate.

*S. Vedachalam, S.J. Riha, Desalination in Northeastern U.S.: Lessons from Four Case Studies, Desalination (2012),doi:[10.1016/j.desal.2012.04.008](https://doi.org/10.1016/j.desal.2012.04.008) from the New York State Water Resources Institute, Department of Earth and Atmospheric Sciences, Cornell University.

If UWNY was convinced that the County water supply issue was so dire, why has it not redoubled its efforts to address its 16% water leakage rate *now* instead of its normal annual maintenance program? The DEIS states that UWNY replaces about 1 percent of the system's lines annually. If there was an imminent water shortage facing the County, then UWNY would not be acting in the best interests of its customers if it did not do everything in its power to take actions to expedite the identification and repair of leaking pipes within its system.

Serious conservation measures as suggested in the academic paper by Bramin and Gruber show that conservation could save 1 to 3 million gallons a day in residential use alone.* Residential use comprises 57 percent of Rockland's total use. The study states that large users were not considered, and savings and incentives in that sector could well yield even greater water savings.

4. “Because satisfying the milestone commitments would be nearly impossible without the assistance of all the parties to the 2006 Joint Proposal, the "best efforts" clause was a crucial element to the balance of the agreement...And many of the parties have actively and overtly worked against United Water to prevent development of the Proposed Project and satisfaction of that milestone commitments, all to the detriment...”

In reference to the requirement that the various parties use their best efforts to assist UWNY to meet their construction milestones, what specifically did UWNY request parties to do, besides attend an annual meeting? If obtaining the ‘best efforts’ of the signatories to the Joint Proposal was so critical to the success of the project, then when UWNY realized that certain parties were waning in their support, why did UWNY not heed the signs and reach out to them to better explain the rationale for the project or find out where the disagreement lay? It was clear several years ago that this proposal faced serious public doubt. Public officials began receiving calls and communicated this publicly and to UWNY. As UWNY began releasing more information, it appeared as though the water company was set on this alternative, despite arguments to the contrary, a pattern the Vedachalam and Riha paper cites above.

One example of cooperation among the parties was the work on the water hydrants. The repair and maintenance of water hydrants as required in the 2006 Joint Proposal was completed in accordance with the schedule outlined in that Joint Proposal.

* Stuart Braman and Simon Gruber, Water Conservation and Long-Term Water Supply Planning in the Hudson Valley: A Rockland County Case Study Discussion Brief #7 – Summer 2012, Center for Research, Regional Education and Outreach, State University of New York at New Paltz.

5. Issuance of FEIS – “Unfortunately, while United Water has understood for weeks that DEC possesses all the necessary information from United Water to complete and file the FEIS, and that the FEIS is indeed complete, filing of the FEIS has become delayed by matters or events wholly outside of United Water’s Control.”

Issuance of the FEIS is properly an administrative decision made by the NYS DEC, not UWNY. UWNY’s statement that they are not aware of “any scientific, technical or other substantive reason preventing DEC from filing and noticing the FEIS as complete” is disingenuous at best. UWNY is no doubt aware that we and many other organizations and individuals have requested that the NYS DEC hold an issues conference to resolve the multitude of disputed issues. These include the cost of the proposed desalination project, the costs of alternatives, the potential water savings from conservation, energy costs associated with desalination, and the impact of new FEMA maps for Haverstraw Bay

UWNY is also aware of the resolutions calling for an issues conference passed by four of the five towns and 12 of the 19 villages in Rockland County, which outline numerous reasons for such a hearing. They have been amply described elsewhere and need not be reiterated here. The County Legislature overwhelmingly passed a resolution in favor of an Issues Conference 15-1; the County Executive has called for the conference as have all candidates for County Executive. Given the significant public opposition in the form of petitions, community views, public forums and letters submitted by residents and organizations, UWNY was clearly notified that there were many unanswered questions about the project.

Mr. Stanton appears not to understand the SEQRA process, the thrust of which is to allow for a thorough analysis of a project in which all significant adverse impacts are identified as well as the means of their mitigation. If it is a large-scale project, as the water supply project is, or has multiple significant adverse impacts as this project does, then it is likely that the analysis, review and public input process will be lengthy. This is a normal part of the process and is what makes it effective. The SEQRA process encourages public input. Characterizing the public process as, “political machinations by special interest groups, certain elected officials and nearby municipalities” shows a lack of regard for the public.

The DEC’s deliberations on our request for an issues conference may indeed be holding up release of the FEIS. It may expedite the process if UWNY would join us in our request for such a conference, which is a routine step in the SEQRA process.

6. “Any responsible discussion of the merits of the Proposed Project, however, must focus first on the reason the PSC mandated that United Water develop the Project in the first place – a need for the Proposed Project was recognized by the PSC seven years ago and has since been confirmed by numerous independent analyses and demand projections as detailed in the DEIS for the Proposed Project.”

There are two problems with UWNY's statement concerning need. First, the PSC did not mandate that UWNY develop a desalination project; they mandated that on or before January 15, 2007, UWNY submit a description of a *long-term major water supply project*.

Secondly, when UWNY states that numerous independent analyses confirm the need for their project, they conveniently ignore the 2010 U.S.G.S. study by Paul M. Heisig referenced in No. 3 above. Although the conclusions that Mr. Heisig reached in his scientific analyses have been widely promulgated, UWNY does not acknowledge them.

First, Mr. Heisig estimated that residential per capita water usage is 75 gallons per day, not 66, as UWNY stated in the DEIS (page I-34) meaning that there may be potential savings through conservation. That difference alone of 9 gallons per day, equivalent to 14%, would make a significant impact since UWNY calculates that residential usage represents 58.1% of total water consumption. (For an explanation of the discrepancy of residential water usage, see page 108 of the study; Mr. Heisig explains that UWNY may overstate the actual residential population it serves by using the number of customers connected to the system rather than the number actually using its water.)

Secondly, Paul Heisig concludes his study by stating: "Review of pumping-rate and water-level data from the bedrock aquifer as far back as 1989 suggests that there is not a year-to-year, aquifer-wide downward trend in water level...The greatest concern regarding sustainability of groundwater resources is the aquifer response to the annual increase in pumping rates during the growing season (an average increase of 25 percent in 2005)." (page 112.)

We and others have previously petitioned the Public Service Commission to reconsider the 2006 Rate Order in light of the conclusions reached in the 2010 study that was published *after* the 2010 Rate Case, but our petition was dismissed. Assemblywoman Jaffee, Chairwoman Harriet Cornell and the Rockland County Legislature submitted requests for the re-opening of the 2006 rate case citing different arguments including the U.S.G.S. study of 2010. The PSC denied the requests without explanation. We have never been informed by the PSC or UWNY that the contents of this study have been addressed or even acknowledged by either party.

7. "The extensive scope of studies and review of the Project required of United Water to date and the specter of further administrative processes and delays at the DEC together with the other development costs for the Proposed Project run the risk of exceeding actual construction expenses."

This appears to be an extraordinary statement since typically, development or planning costs represent a fraction of the actual construction costs of a project. The only cost information we have been privy to is that contained in the DEIS, which states that the *capital* costs are estimated to range from \$139.2 to \$189.3 million. There is no mention of actual or projected planning, design or permitting costs. Without seeing a budget for

the pilot project and proposed plant, it is impossible to comment intelligently on the expenditure of \$54 million.

8. “First, United Water seeks authorization from the PSC to immediately file the NWSS surcharge application or to otherwise recover the significant pre-construction costs spent in development of the Proposed Project...”

Included in the costs that UWNYS seeks to recover are those related to conducting a public relations campaign for the desalination project. The 2010 Joint Proposal called for UWNYS to conduct a public outreach and education campaign to increase the public’s “awareness and understanding of such water service matters as service quality, system improvements, water conservation and customer rights.” Promoting the proposed desalination plant was not listed among the topics to be addressed. Therefore we question whether the expenditures related to UWNYS’s extensive advertising campaign for the proposed desalination project should be allowable expenses and thereby passed on to customers in this rate case.

UWNYS’s comprehensive public relations campaign for the desalination project is on-going. It includes regular messages on their website, daily quarter-page advertisements in the *Journal News*, the *Our Town* and other print vehicles. They air commercials on cable television extolling the need for the project, promising the water’s safety and purity. These pieces are not attempts to educate the public about the project but merely statements that cannot be independently verified meant to garner support and squelch opposition. Some are actually misleading. One television commercial noted that water for the proposed project would originate in a mountain lake; like many questionable ad campaigns that is partly true as the Hudson River originates at Lake Tear-in-the-Clouds. The River continues to flow south, past numerous toxic sites, including the Indian Point nuclear power plant, where it can mix with accidental discharges from the power plant.

In the April 22, 2010 rate case public hearing in the Town of Ramapo, a number of speakers criticized UWNYS for spending too much on advertising that promotes the proposed project. People continue to argue that this is an inappropriate use of customer revenue.

Thank you for considering our concerns.

Sincerely,



Ellen Jaffee
Member of Assembly
97th District



Harriet D. Cornell
Chairwoman
Rockland County Legislature