

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Meeting of the Public Service Commission

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Thursday, November 13, 2014  
10:30 a.m.  
Three Empire State Plaza  
Agency Building 3, 19th Floor  
Albany, New York

COMMISSIONERS:

AUDREY ZIBELMAN, Chair  
DIANE X. BURMAN  
GREGG C. SAYRE  
PATRICIA L. ACAMPORA  
GARRY BROWN

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2 (The meeting commenced at 10:33  
3 a.m.)

4 CHAIR ZIBELMAN: It feels like we  
5 were just together. So good morning. I would like  
6 to call the session of the Public Service  
7 Commission to order.

8 Secretary Burgess, are there any  
9 changes on the agenda today?

10 SECRETARY BURGESS: There are  
11 several changes to the agenda this morning. Item  
12 201 A, case 14-M-0183, which is a joint petition of  
13 Time Warner Cable and Comcast Corporation for  
14 approval of a holding company level transfer of  
15 control is over.

16 Item 201 B, case 14-M-0219, the  
17 joint petition of Charter Communications and  
18 Comcast Corporation for approval of a transfer of  
19 control of subsidiaries and franchises is over.

20 Item 164, case 08-G-01 -- 1015,  
21 petition of Niagara Mohawk Power Corporation for  
22 approval of an energy efficiency portfolio  
23 standard, the Fast Track Utility-Administered Gas  
24 Energy Efficiency Program is over.

25 Item 366, case 03-E-0188, the

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2 petition by Global Structured Finance Advisors and  
3 GP Renewables and Trading, LLC is over.

4 Item 367, case 08-E-1014, the  
5 petition of Niagara Mohawk Power Corporation for  
6 approval of an energy efficiency portfolio  
7 standard, quote, Fast Track Utility-Administered  
8 Electric Energy Efficiency Program is over.

9 Item 371, proceeding to examine  
10 the repowering alternatives appeal filed by  
11 Earthjustice is over.

12 And finally, Item 665, the  
13 petition by Verizon New York, Inc. for a  
14 certificate of confirmation for its franchise with  
15 the Town and Village of Harrison, Westchester  
16 County is also over.

17 CHAIR ZIBELMAN: Okay. Thank  
18 you. That just about does it so we're done.  
19 Right? Bye. So thank you.

20 Just before we get started on the  
21 agenda, I just wanted to make a couple of  
22 administrative announcements, which I'm actually  
23 quite delighted to make. Sitting with us today is  
24 Jalila Aissi, who has just joined us as Staff  
25 counsel for -- or as Commission counsel and will be

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2 working with Kate and Elaine.

3 And Jalila is an exceptional  
4 person we've had an opportunity to work with.  
5 She's been -- previously was working as a fellow, I  
6 believe, with the governor's office and I'm just  
7 delighted to have her on Staff.

8 And then I am also pleased to  
9 announce that Tom Congdon, who many of you might  
10 know, who has been the deputy secretary for energy  
11 for the governor's office, has agreed to come over  
12 and join us in a position as deputy of markets and  
13 innovation, and where he will be working both  
14 overseeing as we think about REV and developing new  
15 markets as well as clean energy and supporting  
16 that.

17 Tom is coming, as many of you  
18 know, with a huge wealth of experience and has been  
19 a huge aid and help to us as we've navigated  
20 things. And I could not be happier that he finally  
21 consented to come get a real job and work with us.  
22 So we're really, really pleased to have Tom here.

23 With that, we will get started.  
24 We're going to take things a little bit out of  
25 order. The first item for discussion is item 301,

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2 which is the petition of the Ginna Nuclear Power  
3 Plant, requesting initiation of a proceeding to  
4 examine a proposal for continued operation. Alan  
5 Michaels, Assistant Counsel of the Office of  
6 General Counsel will be presenting this.

7 Hi, Alan.

8 MR. MICHAELS: Good morning,  
9 Chair, and good morning, Commissioners.

10 The matter before you this  
11 morning initiated from a petition filed by Ginna  
12 Nuclear Power Plant, LLC, which is the owner of a  
13 generation facility in Ontario, New York,  
14 approximately twenty miles northeast of Rochester.  
15 It produces five hundred and eighty-one megawatts  
16 of electricity and is licensed to operate by the  
17 federal government until 2029.

18 Until recently, Ginna has been  
19 under a purchase power agreement, selling most of  
20 its electricity produced to R.G. and E. However,  
21 this agreement expired in June of 2014. Since  
22 then, the producer has been operating as a merchant  
23 generator.

24 Within its petition, Ginna  
25 alleges that revenues are insufficient to cover its



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2 electric system reliability. The New York ISO  
3 reliability study shows a need for 2015 and 2018,  
4 as we discussed. However, comments in opposition  
5 have been filed and contend that the study should  
6 review consecutive years. However, there are no  
7 such requirements.

8 It must be recognized that the  
9 study was done in accordance with appropriate  
10 guidance and standards from NRC, NPCC, the New York  
11 Reliability Council, and the New York ISO  
12 Additionally, the two years studied represent the  
13 expected balance of a transmission project in the  
14 RG&E service area, known as the Rochester Area  
15 Reliability Project, or the RARP, which, according  
16 to the study, is expected to be online in the fall  
17 of 2018.

18 So to conclude need, a  
19 reliability study for the continued operation of  
20 the facility was found and -- by a proper study  
21 performed by the New York ISO.

22 The second issue is notice.  
23 Ginna requests within its petition that its  
24 petition itself satisfies the requirements of a  
25 retirement notice of a generation facility.



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2 transmission alternatives that it is currently  
3 reviewing will take time, specifically, more than  
4 one hundred and eighty days to complete the RARP  
5 Any other alternatives by third parties could have  
6 been proposed once the petition was filed.  
7 Additionally, RG&E has issued a request for  
8 proposals, an R.F.P., seeking alternatives. And  
9 responses are due in November 21st.

10 Third, if the petition from July  
11 is accepted and no action is taken until January,  
12 six months have, therefore, passed. Therefore, the  
13 policies depicted in the generation retirement  
14 order have been furthered.

15 Additionally, there are other  
16 factors justifying accepting the petition without a  
17 specific date of retirement. As a nuclear  
18 facility, there exists unique circumstances, both  
19 regulatory and practical. First, Ginna must comply  
20 with the Nuclear Regulatory Commission rules, which  
21 require Ginna to submit to the N.R.C. written  
22 certification of a determination of retirement if a  
23 specific retirement notice is given. This would  
24 state that the power from the facility would  
25 permanently cease at a given date.

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2 Once N.R.C. is noticed, N.R.C.  
3 further requires decommissioning compliance which  
4 would provide from Ginna the following to the  
5 N.R.C., cost estimates, plans, reports, and an  
6 assurance that funds are locked in an account for  
7 the sole purpose of decommissioning.

8 Additionally, if noticed a  
9 specific date of retirement, Ginna could risk  
10 losing its employees. These people have  
11 specialized talents, not just within their fields,  
12 but also in relation to this specific Ginna plant.  
13 They are also in high demand. If a specific  
14 retirement may -- were published, these employees  
15 could see it as a threat and may leave.

16 Based upon the RFP, the time  
17 period from the date of the petition and the unique  
18 circumstances presented here, the spirit of the  
19 retirement policy has been satisfied.

20 Lastly, the petition requests to  
21 have RG&E enter negotiations for an RSSA noting  
22 that the retention of the facility is necessary for  
23 reliability, Ginna certifies revenues expected will  
24 not be sufficient to cover costs of operation and  
25 further certifies that, absent an RSSA, the

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2 facility would be retired as soon as practicable.

3 Therefore, initiating negotiations may be an

4 acceptable solution.

5 Opponents maintain a concern for

6 cost. It should be expected by the Commission that

7 RG&E shall thoroughly investigate economic

8 circumstance of Ginna to value the reliability of

9 continued operation appropriately. Further, the

10 Commission should expect RG&E to take changing

11 economic circumstances and market prices into

12 account during negotiations.

13 Noting that there is an RFP

14 outstanding, we may receive alternatives. If these

15 alternatives are cost effective, which may include

16 generation, transmission, or other resources, and

17 if they would be available in a timely fashion,

18 they should be taken under consideration and the

19 negotiations should accommodate these alternatives.

20 To conclude, a reliability need

21 is demonstrated for the facility. The spirit of

22 the retirement notice policies have been met in the

23 unique circumstance of this facility, and lastly,

24 the economic circumstances are sufficient to

25 warrant initiation of negotiations for an RSSA,

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2 which will reveal the extent of Ginna's economic  
3 situation.

4 Thank you and I'm open to  
5 questions.

6 CHAIR ZIBELMAN: Thank you, Alan.

7 All right. You know, I was  
8 thinking about this. These kind of issues  
9 obviously present a very difficult issue --  
10 situation for the Commission and something that we  
11 have been talking about a lot in the last couple of  
12 weeks it seems. But the challenge we have is this  
13 and I am appreciative of the way Staff and the  
14 parties have dealt with it.

15 This is a five hundred and  
16 eighty-one megawatt nuclear power plant. If the  
17 plant retires, we have indication that the ability  
18 to maintain a secure power source to Rochester is  
19 going to be threatened. Obviously, the Commission  
20 has a great deal of concern for reliability and  
21 when we develop our systems, our generation and  
22 transmission systems, they were developed as an  
23 integrated whole.

24 And what we find is is that some  
25 resources such as Ginna, if they retire, compromise



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2 that we would have a loss of resources. And quite  
3 frankly, it is hard to find nuclear engineers to  
4 come work for a plant if they know the plant is  
5 going to be only operational for a short duration.  
6 And we have to worry about that.

7 Secondly, we want to make certain  
8 that in evaluating whether or not we need the  
9 plant, we have sufficient time to look at  
10 alternatives. And I think, you know, the fact that  
11 we have had this since July, and there is going to  
12 be an opportunity to negotiate, and RG&E is doing  
13 an RFP gives us ample time to take a look and see  
14 if there are viable alternatives in lieu of the  
15 power plant.

16 And third, I think the other  
17 issue that we have, going forward, is we do fully  
18 expect RG&E to do a strong economic analysis of  
19 what the actual situation is of Ginna and then also  
20 taking a look at what's the best price and  
21 obviously this price and looking at it will come  
22 back to the Commission for review.

23 So to my mind, you have -- we  
24 have a situation that unfortunately while none of  
25 us want to get involved in these agreements, we



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2 position. I think it's a good outcome. Not a  
3 great situation that we find ourselves in, but  
4 unfortunately with the low price of gas, it seems  
5 to be a situation we're in. So with that, I'm  
6 prepared to support the recommendation.

7 Any further questions, comments?

8 COMMISSIONER SAYRE: As a  
9 Commissioner living in the Rochester area, I would  
10 like to say that I do wish Ginna well. Over the  
11 years, they've been a good citizen, a large  
12 taxpayer, a job creator, and a source of power  
13 without carbon or other emissions. But we need to  
14 look at all the alternatives and this item will  
15 have us do that.

16 In the long run, we will adopt  
17 the policy that will be the best choice for the  
18 ratepayers to ensure the reliability of power  
19 supply in the Rochester area. And I look forward  
20 to seeing the results of that study.

21 CHAIR ZIBELMAN: Commissioner  
22 Burman?

23 COMMISSIONER BURMAN: Thank you.  
24 Thank you for allowing me to speak on this issue.

25 I think this is very important.

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2 It comes down, to me, to a couple of factors that  
3 make me very supportive of it. Ginna Nuclear Power  
4 Plant is an important asset in the state's  
5 generation fleet and I think can positively  
6 contribute to our overall state grid reliability.  
7 So for me the first prong is reliability and I  
8 think it is important that we do what we need to do  
9 to ensure that, and properly.

10 The second is that looking at the  
11 generation retirement notice, I think it is  
12 properly satisfied. And I am very comfortable with  
13 that, knowing that we have to factor in what the  
14 overall goal is.

15 And then the third is fuel  
16 diversity. And I think it's an important reliable  
17 carbon-free energy that helps us in our -- in our  
18 energy resources. And looking at this for me, the  
19 loss of jobs and economic growth is significant  
20 without this plant.

21 And then the fourth is looking at  
22 the economic analysis that will be done after this.  
23 And I think that is very important and one that we  
24 really need to holistically look at in all of our  
25 analysis.

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2 And then I come down to other  
3 outside factors, Moody's, the North American  
4 Electric Reliability Corporation, and the focus  
5 there on the real need of potential retirements of  
6 nuclear plants across the nation and identifying  
7 what we need to do to ensure that we are properly  
8 taking care of our viable assets that we have and  
9 not having significant loss in New York.

10 So I'm very supportive. Thank  
11 you.

12 CHAIR ZIBELMAN: Thank you.

13 Further comments?

14 Just one thing -- and Raj, you  
15 are here in case either one of you might want to  
16 comment, just for clarification. We do these  
17 reliability agreements and they are really  
18 agreements if, in fact, a power plant can  
19 demonstrate that economically the market just  
20 doesn't support it. So, you know, there is a  
21 threshold. It's not because they just feel like  
22 it. We -- we -- we have pretty rigorous -- on  
23 that.

24 The second is is that and I think  
25 to Commissioner Sayre's and Commissioner Burman's

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2 points, and I think we all feel this way, we --  
3 this plant employs, I believe, on the order of  
4 seven hundred people. It is an important part of  
5 the economy for the area and also important part of  
6 the grid for all of the reasons I think we have  
7 identified, fuel diversity, costs.

8 So in looking at this RSS  
9 agreement, one of the potential outcomes could be  
10 that the market prices increase and that after two  
11 or three years, it's quite -- there's the potential  
12 that the plant could decide -- could find that  
13 economically it could survive without an agreement.  
14 And that's one of the things that we would look  
15 for.

16 And my expectation is that when  
17 we get this agreement, it will have what we have  
18 seen in other agreements as a form of a claw back,  
19 in which case if, in fact, we find that their  
20 revenues that exceeded what was expected, that  
21 there is a mechanism to pay them back to consumers  
22 who are in an interim supporting a plant because  
23 the market is not supporting it.

24 So, you know, I think to our  
25 both -- you know, what we would like to see,

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2 obviously, is one, that the amount of support the  
3 consumers are getting are the least amount  
4 necessary to keep the plant operational. And  
5 secondly, in recognition of the potential that the  
6 markets will come back and allow the plant to  
7 continue to be supported without a ratepayer  
8 support, there is a mechanism in the contract to  
9 allow for that so that we are achieving what we  
10 need to do, is maintaining reliability at the  
11 lowest possible risk to consumers. And that's been  
12 sort of our standard and I would expect that to be  
13 followed here.

14 MR. ADDEPALLI: Yes. Just to  
15 give another context perspective Commissioner, is  
16 that in the last decade, over four thousand some  
17 megawatts have retired or filed for mothball  
18 notice. Of those, under four hundred megawatts  
19 today is under RSS contract. So these are done  
20 very selectively only -- only if there is a  
21 reliability need. If not, the plant should be  
22 allowed to exit the market as the market rules  
23 require.

24 And second, as you pointed out,  
25 we don't want to be in the situation heads you win,



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2    will be important because it would be -- and none  
3    of us -- I don't -- I know that utilities don't  
4    like it, we don't like it, and I'm sure the  
5    generators are not too happy about it either, is to  
6    have to negotiate under this kind of situation. So  
7    the better -- the more we can get ahead of that it  
8    will be good, too.

9                                   MR. ADDEPALLI:  Definitely we  
10   will come back to.  That study's under way.

11                                  CHAIR ZIBELMAN:  Okay.  Good.  
12   Great.

13                                  With that then, all those in  
14   favor of the recommendation to direct Rochester Gas  
15   and Electric Corporation and the Ginna Nuclear  
16   Power Plant to negotiate a reliability support  
17   service agreement, please indicate by saying aye.

18                                  COMMISSIONERS:  Aye.

19                                  CHAIR ZIBELMAN:  Opposed?

20                                  Hearing no opposition, there  
21   being none, the recommendation is adopted.

22                                  Thank you, Mr. Michaels.

23                                  MR. MICHAELS:  Thank you, Madam  
24   Chair.

25                                  CHAIR ZIBELMAN:  So the second

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2    item for discussion today is a Staff report  
3    regarding the investigation of the September 2013  
4    electric outage affecting the Metropolitan Transit  
5    Authorities Metro-North Railroad New Haven line.  
6    Leka Gjonaj is going to be presenting this today  
7    and this is for report only. There is no vote on  
8    it so --.

9                                   But Leka, please proceed.

10                                  MR. GJONAJ: Good morning, Chair  
11    Zibelman and Commissioners.

12                                  I'm here this morning to -- as  
13    Chair Zibelman just stated, I am here this morning  
14    to brief you on Staff's investigation of the  
15    September 25th, 2013 total power outage to a  
16    Metro-North substation located in Mount Vernon, New  
17    York.

18                                  On Wednesday, September 25th at  
19    five twenty-two in the morning, a single ConEdison  
20    underground electric supply -- electric cable  
21    supplying power at one hundred and thirty-eight  
22    thousand volts, or shorthand one 138 kV, to a  
23    Metro-North railroad substation located in Mount  
24    Vernon, New York, catastrophically failed. This  
25    failure crippled rail service to Metro-North's New

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2 Haven line -- rail line, one of the busiest in the  
3 region, creating disruptions and hardship to the  
4 lives of over its one hundred and twenty-five  
5 thousand daily commuters for the next twelve days.

6 So what did Staff's investigation  
7 find? Metro-North owns, operates, and maintains an  
8 electric system on par with any utility system to  
9 provide service to its rail lines. In other words,  
10 it is a very sophisticated customer. It is not  
11 your typical ConEdison customer, but, in fact, is a  
12 utility-like electric system taking service from  
13 ConEdison.

14 At the time of the failure,  
15 Metro-North was in the first phase of a two-phase  
16 major upgrade and rebuild of its Mount Vernon  
17 substation. This involved, among other things,  
18 relocating one of the two underground feeder cables  
19 that normally supply station power from ConEdison's  
20 transmission system.

21 The feeder that was to be -- the  
22 feeder that was to be relocated is designated 38W10  
23 and the one that was to remain in service is  
24 designated, conveniently enough, 38W09. These two  
25 cables run parallel to each other underground



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2 design, meaning it would have no electric supply  
3 should the one cable fail or, for some reason,  
4 become unavailable.

5 Now, just -- okay. Just go to  
6 the next slide, please.

7 Okay. The cables supplying  
8 Metro-North are an oil-filled pipe-type cable  
9 system. You may have gotten tired reading that in  
10 the Staff's report and are coming across that so --  
11 any way.

12 This is an example of what was  
13 actually taken out from that Metro-North station.  
14 This is obviously the pipe, this is obviously the  
15 cable, all three conductors bundled. This sits  
16 inside the pipe and this is filled with oil -- an  
17 oil-like product and that oil-like product acts as  
18 a dielectric. In other words, it acts as an  
19 electric insulator such that the conductor or the  
20 copper portion inside there does not come in  
21 contact with the steel pipe and to ground and  
22 fault.

23 However, it's a system. The  
24 pressurized oil and the paper -- oil-impregnate  
25 paper surrounding the conductor act as a system.

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2 If the paper fails, it is compromised. If the oil  
3 is compromised, the potential for failure exists.  
4 So the two have to work together.

5 Also, for these oil-filled  
6 pipe-type cables, it has been industry standard for  
7 decades to perform what's called a freeze  
8 operation -- to perform a freeze operation to the  
9 pipe to solidify a portion of the oil to create a  
10 slug so as to minimize the amount of oil that needs  
11 to be drained from the pipe to perform repairs or  
12 modifications.

13 So I just -- here on the slide,  
14 just this is an example of the freeze pit structure  
15 that's created to do this freeze operation. And  
16 essentially what is done is you have to excavate  
17 about an eight-by-ten or twelve-foot wide hole and  
18 deep enough to get to the cables, unearth the  
19 cables, expose them, and you have to build this  
20 temporary cover so to keep the elements and for  
21 safety reasons and then -- next slide, Jeff.

22 What is done at that point is  
23 that there is freeze apparatus installed on the  
24 pipe. Okay? You see that white stuff; that's the  
25 frozen pipe right there. And what they use is

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2 liquid nitrogen slowly dripped at a constant rate  
3 to ensure that that slug of oil does not become  
4 liquid at any point in time because once you cut  
5 into the pipe downstream, you run the -- if that  
6 were to thaw, you would run the risk of all that  
7 oil coming down the pipe and hurting somebody.

8 This is done also because you  
9 don't want to drain all of the oil from these pipe  
10 systems. You want to drain as little as possible.  
11 So setting up on these freeze pit operations, there  
12 are few things in consideration, get as close as  
13 you can, but then you have to consider traffic, you  
14 have to consider residences and all that sorts of  
15 thing. So anyway, that is sort of what it would  
16 look like inside of one of these pits during a  
17 freeze operation.

18 In this instance, the freeze was  
19 initiated on September 14th to cable 38W10. And  
20 about eleven days later on September 25th, the  
21 adjacent cable, the one that runs alongside it,  
22 38W09, failed. It failed at a location near, but  
23 not adjacent to where the freeze operation was  
24 taking place on 38W10.

25 So for example in this photo

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2 here, the pipe there to the right, which is the  
3 black thing -- that is actually a gas line, that is  
4 not an electric line in this particular instance.

5 So the expectation would have  
6 been that when the neighboring pipe failed, it  
7 would have been right adjacent to right alongside  
8 where you see the frosty part on the pipe. That  
9 would have been the -- but that wasn't the case.  
10 The case was that the pipe actually failed in an  
11 unexcavated portion of soil that was not exposed.  
12 So it was unusual, obviously. I should say,  
13 obviously it was unusual.

14 With the aid of -- so then the  
15 issue became what happened. With the aid of two  
16 forensic consultants, Staff's investigation  
17 involved a deep analysis into the cause of the  
18 failure. The damaged section of cable and pipe was  
19 extracted from the freeze pit. And a strict  
20 protocol for handling this forensic evidence by the  
21 consultants was instituted to ensure the integrity  
22 of the investigation. Staff was present at the  
23 consultant's respective facilities during all  
24 important investigatory steps and tests performed  
25 by them.

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2 The forensic consultants  
3 concluded that a large section of bedrock located  
4 outside of the excavated freeze pit, just beneath  
5 the feeders and the surrounding soil, created a  
6 barrier that allowed water to pool and the  
7 subsequent freezing of the surrounding soil. So as  
8 the pipe is being frozen, the soil ahead of it was  
9 being frozen and at the same time, now it's  
10 conducting heat away from the pipe that was in  
11 service. And therefore, what happened was it  
12 caused the dielectric fluid in the neighboring pipe  
13 to solidify. So once that happened, the dielectric  
14 system had been compromised. It was just a matter  
15 of time before that failed. And when they fail,  
16 they fail catastrophically.

17 After examining the physical  
18 evidence and observing and reviewing the  
19 consultant's analyses and tests, Staff agrees with  
20 the consultant's conclusion regarding cause of  
21 cable failure.

22 Because these pipes and cables  
23 were installed in 1977, the consultants were asked  
24 to evaluate whether the age of the pipe or cable  
25 contributed to the failure. Aside from visual

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2 evaluation, both pipe and cable were subject to a  
3 number of industry accepted engineering tests and  
4 evaluations. The conclusion was that neither the  
5 pipe or cable section showed any degradation due to  
6 age or environment. In fact, the condition of the  
7 cable was found to be typical of a new cable with a  
8 remaining life expectancy of more than forty years.

9 Knowing the cause of the failure,  
10 it became a matter of understanding whether proper  
11 freeze procedures by ConEdison employees were  
12 performed and whether ConEdison could have foreseen  
13 this occurrence and taken preemptive actions. As a  
14 background, ConEdison has owned and operated and  
15 maintained these oil-filled pipe-type cables since  
16 the early 1940s. It currently owns, operates, and  
17 maintains about six hundred and twenty-four miles  
18 of these types of cables, in various voltage  
19 classes, but still six hundred and twenty-four  
20 miles of this.

21 Further, Staff found that since  
22 2001, ConEdison has performed, on average, about  
23 eighteen of these freeze operations a year and that  
24 in its long history of performing freeze operations  
25 it has never had an incident where an adjacent or a

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2 nearby cable, as in this case, was damaged from one  
3 of its freeze operations.

4 Staff reviewed ConEdison's  
5 engineering documentation governing freeze pit  
6 applications to determine if they were followed as  
7 required and we concluded that they were followed  
8 as prescribed. Staff also investigated other  
9 utilities' practices and other industry standards  
10 and found ConEdison's procedures in accordance with  
11 them. In the documentation we reviewed, there was  
12 no mention of a risk of a freeze operation  
13 potentially damaging or affecting a nearby feeder  
14 via a freezing of the soil surrounding the buried  
15 cable.

16 Staff finds that the unique  
17 circumstances surrounding this freeze operation  
18 incident led to this failure and that ConEdison  
19 could not have foreseen or predicted these events.  
20 This event is an example of lessons learned the  
21 hard way. And those lessons now need to be  
22 incorporated by ConEdison in its freeze operations  
23 procedures.

24 As the report recommends, at a  
25 minimum, ConEdison needs to modify its procedures

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2 for these operations involving nearby cables, at a  
3 minimum, to monitor the temperature of the  
4 neighboring soils, monitor the temperature of the  
5 adjacent cable, provide explicit actions for its  
6 personnel to take in the event an unusual  
7 temperature drop is noted, and prior to initiating  
8 a freeze operation, it is supposed to evaluate the  
9 electric load characteristics of customers served  
10 by the cable for atypical patterns.

11 What else did Staff find?

12 Following the failure, it became apparent very  
13 quickly that it would take weeks to repair the  
14 damaged cable, 38W09, and it would also take weeks  
15 to return the 38W10 to service from its outage  
16 state.

17 With no source of electric power,  
18 it then became a scramble of what to do. ConEdison  
19 and Metro-North devised a plan to construct a  
20 temporary substation on a parking lot in Harrison,  
21 New York and backfeed this section of track that  
22 was outaged, using ConEdison's distribution system  
23 which operates at 13.8 kV or one-tenth the voltage  
24 that its ConEd's transmission system operates.

25 Doing this backfeed to

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2 Metro-North also exposed ConEdison's distribution  
3 system customers to risk. This construction  
4 activity took about five days to complete and, when  
5 completed, provided about thirty-five percent of  
6 service -- rail service capability. In parallel,  
7 Metro-North moved diesel powered trains from its  
8 other lines to help move commuters through this  
9 eight point three miles of electrically dead track.  
10 Also, Metro-North moved a number of buses to  
11 shuttle commuters around this section of track.

12 If I could just have that first  
13 image, Jeff. I just -- this is a point that I  
14 don't know if I --. The Metro-North line runs,  
15 obviously, from New Haven, Connecticut and it  
16 terminates down in Grand Central Station,  
17 Manhattan. The section of track served by this  
18 particular substation is what's -- you see that  
19 rectangle. So electrically, the rest of the line  
20 was fine up to that rectangle. And beyond the  
21 rectangle was fine. So the key was what do you do  
22 with the rail commuters to get them around that.

23 So you have to sort of either  
24 drive a diesel train through there, which requires  
25 no electricity, or you have to put them on a bus

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2 and kind of get them to the next station so that  
3 was taking place. The rest of the New Haven line  
4 was not impacted electrically.

5 Also, in parallel, ConEdison made  
6 the decision to expedite the work on the outage  
7 cable as the damaged cable would take longer to  
8 repair so that on Monday, October 7th, now, New  
9 Haven commuter lines could experience full service  
10 again.

11 Last, on October 19th, the  
12 damaged cable was returned to service and returning  
13 the Mount Vernon substation to its normal  
14 electrical configuration with two 138 kV supplies.

15 Prior to this extended outage,  
16 Staff did not find -- in its investigation, Staff  
17 did not find any evidence that Metro-North had  
18 developed a contingency plan of what to do to  
19 provide and maintain full rail service should the  
20 one remaining feeder fail or otherwise become  
21 unavailable. Staff found no written evidence from  
22 meeting notes, emails, and phone logs examined that  
23 a contingency plan was provided or produced.

24 ConEdison was under the  
25 impression that the use of an electrical tie or a



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2 would have required taking extended outage of the  
3 other cable for a similar period of time, or about  
4 thirty days.

5 Chair Zibelman, in a letter  
6 addressed to ConEdison President Ivey, and dated  
7 December 10th, 2013, directed ConEdison, absent an  
8 emergency, to not intentionally remove from service  
9 any supply cable to Metro-North's Mount Vernon  
10 station before submitting a contingency plan  
11 jointly developed by ConEdison, Metro-North to  
12 maintain full service should both cables be  
13 unavailable.

14 Further, Staff was directed to  
15 review the plan for reasonableness and reply in  
16 writing to ConEdison Metro-North that the plan is  
17 reasonable. And Staff did that. The plan was  
18 filed on April 10th, 2014. On April 17th, both  
19 ConEdison and Metro-North were notified by Staff  
20 that it was a reasonable plan. And on April 13th,  
21 2014 the cable was removed from service and the  
22 work completed without incident and the cable  
23 returned to service on May 10th, 2014.

24 The development of this  
25 contingency plan completes when the recommendations

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2    contained in Staff's report. The report goes on to  
3    recommend that critical infrastructure customers,  
4    namely railroads, subways, airports, water  
5    supply -- water supplies, and waste water treatment  
6    facilities should be given special consideration  
7    during planned maintenance outages, due to the  
8    widespread public impact that can result if  
9    electric service is not available to them.

10                                In other words, prior to taking  
11    an outage of the electric supplies to one of these  
12    customers, a contingency plan needs to be in place.  
13    If the plan provides for less than fifty percent of  
14    normal service, the customers senior management  
15    needs to affirm in writing that this is a  
16    satisfactory circumstance for its customers and the  
17    governmental agency that oversees or regulates its  
18    operations.

19                                That concludes my presentation.  
20    I'd be happy to answer any questions that you may  
21    have.

22                                CHAIR ZIBELMAN: First of all,  
23    Leka -- and I'm sure there are others involved, but  
24    thank you for your actually fantastic job, both on  
25    the investigation and trying to get to the root

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2 cause of these issues.

3 It is my understanding that in  
4 addition to the fact that we went through and you  
5 were able to verify that ConEd was not doing  
6 anything different, it was following operating  
7 procedures, that there are two things that I think  
8 are detailed in the report you didn't discuss  
9 today, but I think are important for, you know,  
10 everyone -- for us all to recognize.

11 One is, ConEd adhered to its  
12 standards procedures. And then secondarily, ConEd  
13 is actually one of the most experienced utility in  
14 these types of freezing procedures. And we even  
15 went out to see if actually there are other  
16 utilities who had different procedures, to see if  
17 maybe ConEd should have been listening and learning  
18 from others and, in fact, is considered one of the  
19 premiere and everything they're doing is  
20 consistent.

21 So what was unusual about this,  
22 which I thought was fascinating, because it is sort  
23 of like one of those things you never know, is that  
24 because we're talking about Metro-North load and  
25 because Metro-North load peaks during morning and





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2 I was very appreciative when we took the second  
3 outage in the spring, all those changes were put  
4 into place, the monitoring that Leka talked about  
5 and the contingency plan so when we had the second  
6 outage, there was absolutely no effect. I mean, it  
7 was -- it worked.

8 So with that, I think, you know,  
9 I am comfortable with the Staff's really  
10 recommendation and report that this really ends the  
11 matter for us. And I -- but I do note there is a  
12 second chapter here in that we are going to be  
13 imposing new standards on utilities and learn from  
14 this, including ConEd, but the other utilities,  
15 too.

16 So thank you, Leka. And I know  
17 you spent some time in the freeze, but you look  
18 warm now.

19 MR. GJONAJ: I'm warm now.

20 MS. HARRIMAN: So really quick,  
21 Chair, I just wanted to make a note that the report  
22 by Staff is going to be put out for public comment  
23 pursuant to the State Administrative Procedure Act.  
24 Because it contains several recommendations,  
25 although already implemented, Staff will be coming

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2 back to the Commission, asking the Commission to  
3 order the implementation so it has a full force and  
4 effect of enforcement.

5 Second, that Raj did send out a  
6 letter on November 12th to all the other utilities,  
7 asking them to identify comparable circumstances  
8 and to also put forward, not only identification of  
9 those customers, as well as the risk mitigation  
10 plans that should be put in place by the utilities.  
11 When those filings come back from the utilities,  
12 we'll discuss with Staff whether or not they too  
13 should be put out for public comment that would  
14 then enable the Commission to order adoption of  
15 recommendations with respect to those other  
16 utilities, purely, again, not only for information,  
17 full disclosure, as well as for enforcement  
18 capability.

19 CHAIR ZIBELMAN: Thanks, Kim.  
20 Thanks for the clarification.

21 COMMISSIONER BROWN: Leka, the  
22 only -- I mean I thank you for the report and I  
23 understand the uniqueness of this circumstance. I  
24 guess the one disconcerting part for us and for  
25 Staff when they heard it was when they came up with

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2 a backup plan, unfortunately they came up with the  
3 backup plan after the outage occurred. Is that  
4 clear what I heard?

5 MR. GJONAJ: Correct, yes.

6 COMMISSIONER BROWN: So there  
7 really -- at that point, they hadn't even  
8 considered a what-if scenario?

9 CHAIR ZIBELMAN: Well, I actually  
10 think there was a backup plan that ConEd thought  
11 was there.

12 MR. GJONAJ: Well, they thought  
13 there was a backup plan.

14 CHAIR ZIBELMAN: They thought  
15 there was and that's --.

16 MR. GJONAJ: There was an  
17 impression there.

18 CHAIR ZIBELMAN: Yeah and that's  
19 my -- I think that's what's perturbing is there is  
20 like --.

21 COMMISSIONER BROWN: It was a  
22 lack of communication as much as a lack of the  
23 planning.

24 CHAIR ZIBELMAN: Right. It's  
25 like, you know, kind of like with your kids, don't

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2 tell me we would have, could have, just do it;  
3 right? And get it right the first time.

4 COMMISSIONER BROWN: But the  
5 emergency plan they came up with was, for the lack  
6 of a better term, on the fly.

7 MR. GJONAJ: Yeah, I mean there  
8 was no electric supply available. So what do you?  
9 I mean, you can't move one hundred and twenty-five  
10 thousand people on this rail line without electric  
11 service. Trains and buses just don't cut it.

12 COMMISSIONER BROWN: I think  
13 we're doing the right thing in trying to identify  
14 facilities that are essential and identifying a  
15 process that will ensure that this sort of thing  
16 doesn't occur.

17 Thank you.

18 MR. GJONAJ: You're welcome.

19 CHAIR ZIBELMAN: Thank you.

20 It was -- I know that it was a  
21 very -- you know, it was a material impact. Not  
22 the kind of lesson we want to learn, but I think  
23 that in the end, I mean the Staff recommendation,  
24 which as Staff said -- well, Kim said will be out  
25 for comment, shows that the biggest thing is that

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2 we need to make sure this doesn't happen again.

3 And I think we have that plan in mind for that.

4 Yes, Raj?

5 MR. ADDEPALLI: Just to add to  
6 your comment. I want to thank the Staff team for  
7 an extraordinary job done on this. There was a lot  
8 of time spent learning and going through the  
9 details meticulously, diligently, and going to the  
10 consultant sides, forensic investigation and  
11 observing. There's a lot of effort spent both by  
12 our Staff and Kim's staff, too.

13 Thanks to the team.

14 CHAIR ZIBELMAN: The question is  
15 did Kim go into the ice pit?

16 COMMISSIONER ACAMPORA: I have  
17 just one --.

18 CHAIR ZIBELMAN: Go ahead.

19 COMMISSIONER ACAMPORA: I really  
20 appreciate the props. And, you know, the visual,  
21 you know, gives you a visual concept and  
22 understanding of actually what went on. And you  
23 said that they've been doing this for decades. I'm  
24 kind of wondering is there -- as an engineer, is  
25 there anything new coming down the pike on any of

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2 this that would change the freeze?

3 MR. GJONAJ: Well, not so much on  
4 the freeze aspect of it. What's becoming more  
5 accepted, at least by utilities who are naturally  
6 conservative by nature, is that in getting away  
7 from using this oil as a dielectric in general.

8 COMMISSIONER ACAMPORA: The oil.

9 MR. GJONAJ: They are adopting  
10 cables that are what they call solid dielectric and  
11 there would be no oil involved. So in that case,  
12 there would be no freeze operations needed.

13 COMMISSIONER ACAMPORA: Yeah.

14 MR. GJONAJ: But --.

15 COMMISSIONER ACAMPORA: Very  
16 good. Thank you so much.

17 CHAIR ZIBELMAN: Okay. Back to  
18 the next item then. And it is item 402. And  
19 that's United Water -- New Rochelle United Water,  
20 Westchester, petition for a merger and request to  
21 increase rates. And that is going to be presented  
22 by Administrative Law Judge David Ort. And he is  
23 coming.

24 And then we also have Joe  
25 Lochner, who is here to talk about and be available

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2 for questions regarding our ongoing investigation  
3 into United Water's accounting irregularities.

4 So I think we'll start with --  
5 David; right?

6 A.L.J. VAN ORT: Yes.

7 CHAIR ZIBELMAN: And then I've  
8 asked -- just so the other Commissioners are aware,  
9 I've asked to -- and Joe is here to answer  
10 questions. As you know, we have an ongoing  
11 investigation to some of the allegations concerning  
12 one of the officers at United Water, particularly  
13 as to whether or not there were accounting  
14 irregularities that may have affected rates and may  
15 be affecting the decision here. And I just thought  
16 it would be helpful as we're considering the  
17 application for the merger and the rate case that  
18 we also hear from Joe about this investigation and  
19 how the outcome of that investigation could affect  
20 us going forward.

21 So with that, we'll just start  
22 with David and then move on to Joe.

23 A.L.J. VAN ORT: Good morning,  
24 Chair Zibelman and Commissioners.

25 You have before you a draft order

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2 which recommends the adoption of terms that are  
3 contained in a joint proposal which was filed in  
4 the three pending cases involving United Water New  
5 Rochelle and United Water Westchester.

6 One of the cases deals with the  
7 proposal to merge United Water Westchester into  
8 United Water New Rochelle. The other two cases  
9 seek an increase in combined annual revenues for  
10 the two companies of approximately fourteen point  
11 four million or about twenty-three percent.

12 I'll describe briefly the  
13 procedural process that was followed because I  
14 think it illustrates that the issues were fully  
15 evaluated in the context of these proceedings.  
16 Subsequent to the filings having been made, the  
17 parties engaged in discovery. Staff and one  
18 intervenor filed testimony and exhibits responding  
19 to the company's filings. The company thereafter  
20 filed rebuttal testimony and exhibits to the  
21 filings of Staff and the intervenor.

22 In mid-May, the two companies,  
23 Staff, municipal intervenors, and the municipal  
24 consortium commenced settlement negotiations which  
25 were continued on several days thereafter. And I

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2 should point out that the municipal intervenors is  
3 representation of the three municipalities that are  
4 served by the United Water Westchester system. The  
5 municipal consortium represents most of the  
6 municipalities that are served by the United Water  
7 New Rochelle system.

8 Ultimately, the two companies,  
9 Staff, and the municipal intervenors reached an  
10 agreement which was embodied in a joint proposal  
11 that was signed and filed with the Commission's  
12 secretary on July 3rd. Subsequent to that, the  
13 parties filed statements either supporting or  
14 opposing the joint proposal and reply statements  
15 were filed.

16 We held two public statement  
17 hearings in this case. One was held in New  
18 Rochelle. Another was held in Rye. We then  
19 followed it with an evidentiary hearing in  
20 mid-August. At that point, the two companies and  
21 Staff sponsored a panel to answer questions with  
22 respect to the joint proposal. And the municipal  
23 consortium conducted cross examination of those  
24 witnesses.

25 Subsequent to that, we had

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2 additional briefs that were filed by the parties.

3 I should note that with respect to the public

4 statement hearings, we had eleven speakers. We

5 also had eight comments that were submitted to the

6 Commission. The draft order addresses the issues

7 that were raised in each of those comments.

8 Now, turning to the joint

9 proposal, and I will address the merger first, the

10 draft order recommends the authorization to merge

11 United Water Westchester into United Water New

12 Rochelle. As part of that, the order captures,

13 essentially, one hundred and eight-three thousand

14 dollars as merger synergies. And those are imputed

15 synergies that would be used to reduce the first

16 year revenue requirement in the rate plan.

17 I should point out that the

18 synergies or the savings that are imputed in

19 this -- in this order are more than fifty percent

20 higher than any of the parties had projected -- or

21 any of the parties had estimated. Excuse me. And

22 the benefits that are identified from this merger

23 are similar -- very similar to benefits that the

24 Commission found to serve the public interest in

25 other mergers.

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2 Now, with respect to the rate  
3 plan, the order would establish a three-year plan  
4 which commenced -- commences on November 1st of  
5 this year and runs through October 31st of 2017.  
6 In contrast to the fourteen point four million that  
7 the companies had requested, which would  
8 essentially be for a one-year case, the order would  
9 allow a total revenue increase of ten point two  
10 million dollars, which would be spread over the  
11 three years of the rate plan.

12 Now, as we know, we are past  
13 November 1st, the start of the rate year. Because  
14 of that, the first-year rates would need to be  
15 compressed to allow the company to receive the  
16 revenues that it would have been entitled to under  
17 the rate plan. And what it does, it means that the  
18 bills for the customers would be slightly higher in  
19 the first year of this rate plan.

20 Because United Water New Rochelle  
21 and United Water Westchester have costs -- a number  
22 of costs, the purchased water for example, as well  
23 as other costs that are very substantial as well as  
24 unique to each system, the order would adopt  
25 separate rate districts for the two systems. The

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2 systems are not interconnected, by the way. And  
3 each of these systems would have stand-alone  
4 revenue requirements associated with them.

5 I note that the vast majority of  
6 the increase would apply to the United Water New  
7 Rochelle system. As part of that, because of the  
8 potential economic impact on the customers the  
9 joint proposal had offered and the order adopts a  
10 levelized approach to those customer impacts to  
11 mitigate the impact on those customers. There  
12 would be no similar benefit to levelization for the  
13 United Water Westchester side of the system, so  
14 that is not being -- not being provided. And the  
15 company assures us that that would not provide any  
16 administrative problems to accomplishing  
17 levelization in it for one system and  
18 non-levelization for another.

19 I should note with respect to the  
20 increases that the first year rate drivers -- of  
21 those first year rate drivers, more than ninety  
22 percent is due to just three cost drivers, property  
23 taxes, purchased water, and rate base additions.  
24 Now, the property tax allows in the draft order --  
25 reflects adjustments to capture the benefits of







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2 The order would adopt the joint  
3 proposals forty-seven percent equity ratio and the  
4 nine point two percent return on equity as well as  
5 a two-tiered sharing threshold for excess earnings.  
6 Those, again, are improvements over the prior plans  
7 that -- for both of these systems.

8 You have all probably dealt with  
9 or recall that we've had proposals or  
10 recommendations to shift fire service -- the public  
11 fire service charges from the municipalities to the  
12 other customers that are served. This is the first  
13 case -- the first rate case where those issues have  
14 been brought in. Obviously, that is with respect  
15 to the legislation that was adopted last year.

16 The rate design for these cases  
17 adopts that shift in the public fire service rates.  
18 One of the things that this case also has is --  
19 notes is that the company is going to provide an  
20 additional cost of service study -- or a new cost  
21 of service study for its next rate case. And one  
22 of the things it is going to do is review the fire  
23 service rates just to ensure that they remain  
24 reasonable.

25 There are a number of other joint



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2 the escalated PSC complaints.

3 I think, simply to conclude, is  
4 that the draft order, as I am sure you have  
5 reviewed and have read, fairly balances the  
6 interests of both the company and its ratepayers.  
7 It provides the company with sufficient revenues  
8 and I think that they can provide safe and adequate  
9 service as a result.

10 Thank you.

11 CHAIR ZIBELMAN: Thank you,  
12 David.

13 Unless someone has a burning  
14 issue, what I'd like to do is just give Joe an  
15 opportunity to update us on the investigation and  
16 then we'll open it for comments.

17 Go ahead, Joe.

18 MR. LOCHNER: Okay. This is  
19 reporting on the termination of Michael Pointing  
20 and two related employees.

21 On September 12th, 2014, Michael  
22 Pointing, the general manager of the New York  
23 Division of United Water, was terminated by the  
24 company. According to the company, Mr. Pointing  
25 was responsible for the operations and financial





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2 interrogatories composed of twenty-one questions.  
3 And to keep this open and so people are aware of  
4 what is going on, the public, we established a  
5 matter number on our website, informed parties of  
6 the matter number, 14-02068, and placed on that --  
7 in that location, for public viewing, all the  
8 interrogatories and the responses that we have  
9 received to date. And by the way, we will be  
10 asking additional interrogatories and they will be  
11 there.

12 What do we know today? Well, we  
13 know in the responses that the company states that  
14 the employees that were terminated were not  
15 terminated for misappropriation of funds. The  
16 company acknowledges, however, that there has been  
17 an overstatement of revenues at its New York United  
18 Water Utilities of approximately seven point one  
19 million dollars. This -- the accounting error  
20 occurred due to the companies improperly booking a  
21 higher level of revenues resulting from the  
22 operation of their revenue reconciliation tariffs  
23 than what was filed for and approved for recovery  
24 by these parties before the Commission under these  
25 tariffs.

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2 This accounting error began in  
3 2010 and carried forward until discovered by the  
4 company in July of 2014, when it prepared its final  
5 revenue reconciliation filing for United Water New  
6 York under case 09-W-0731. Just understand this.  
7 The way these reconciliations work is, under the  
8 rate plan, United Water New York is provided a  
9 revenue reconciliation mechanism that allows the  
10 company ultimately to recover its projected level  
11 metered sales for a full rate year. We call them  
12 the targeted revenues.

13 What happens is the end of every  
14 rate year, the company makes a filing. They  
15 compare their actual metered revenues with their  
16 target revenues. The difference, they are then  
17 allowed to establish a rate, a surcharge or  
18 sur-credit rate to recover the difference the next  
19 period.

20 Separately, however, the company,  
21 during the rate year, while these sales are being  
22 made, has to monthly record an estimate of the  
23 revenues it expects it will file for at the end of  
24 the rate year under the tariff -- under the  
25 reconciliation tariff. This is what caused the

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2 accounting error. Basically the accounting error  
3 was caused by when the company spread the annual  
4 level of targeted revenues in its monthly  
5 accounting, it spread it differently to the months  
6 for the rate year than was reflected or allowed  
7 under the revenue reconciliation mechanism.

8 Now, this difference would have  
9 no problem, there would be no error for  
10 twelve-month periods because the total amount of  
11 target revenues in the monthly accounting for an  
12 annual period is the same as in the reconciliation  
13 mechanism. So for the first rate year -- rate  
14 years, under the United Water of New York rate  
15 plans, there was no impact.

16 However, the last filing was only  
17 nine months. It was for the nine months, ending  
18 May of 2014. And in that situation, however, the  
19 revenue reconciliation filing recognized a target  
20 level of revenues or allowed revenues of only forty  
21 point two million dollars. The company, meanwhile,  
22 in its monthly accounting, assumed that they would  
23 receive revenues of forty seven point three million  
24 dollars. Thereby, they booked seven point one  
25 million dollar greater revenues than was ultimately

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2 allowed for recovery under the reconciliation  
3 mechanism for this period.

4 United Water stated in its  
5 responses that this was the result of a failure to  
6 follow proper accounting principles. However, they  
7 conclude that the employees were not attempting to  
8 intentionally manipulate financial results and were  
9 not engaged in efforts to deceive the company.  
10 United Water acknowledges that these employees, as  
11 a result of this error, received two thousand  
12 dollars of additional incentive pay -- or bonus  
13 pay.

14 However, it is important to point  
15 out that the Commission in setting rates both in  
16 this proceeding that we are seeing before us for a  
17 rate increase, but also United Water of New York,  
18 Owego-Nichols, and Westchester, do not allow  
19 recovery of incentive or bonus pay so ratepayers  
20 could not be harmed by that.

21 The company stated, in its  
22 responses, that they do not believe that the  
23 companies -- that the customers were harmed in the  
24 reconciliation filings as we just discussed. They  
25 also believe that the current concluded rate

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2 proceedings did not reflect these higher revenues  
3 in any shape or form to project the revenues into  
4 those rate years. So they don't see any impact.  
5 They don't see any harm.

6 At the same time, after  
7 discussions with the company -- Staff having  
8 discussions with the company, the company has  
9 decided -- United Water has requested that  
10 PricewaterhouseCoopers, an outside auditing firm,  
11 examine the revenue reconciliation and revenue  
12 accounting processes of the company, going back to  
13 2003 to determine if these accounting errors  
14 occurred before 2010 and if rates were impacted in  
15 any way.

16 We also discussed with the  
17 company a need to expand this examination. And the  
18 company has requested that PWC perform an expanded  
19 review of the conduct of these terminated employees  
20 to test other areas where these people could  
21 potentially have affected the results of the  
22 company, to make sure ratepayers were not harmed.  
23 This will involve gaining an understanding of the  
24 relevant internal controls in those areas that the  
25 employees had influenced and processes and testing

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2 sample transaction to see if there was a negative  
3 impact on ratepayers.

4 Again, the company has promised  
5 that the cost for PWC audits will not be charged to  
6 ratepayers and will be absorbed by the  
7 shareholders.

8 Now, very simply, Staff is in the  
9 preliminary states of this investigation. There is  
10 work still to be done. Staff has obtained the  
11 internal accounting reports and the company  
12 statements, but we still need to verify all of  
13 these statements back to the actual records. We  
14 need to fully verify the statements with regards to  
15 the reconciliation filing back to the actual  
16 filings underlying work papers.

17 We also have to go back and  
18 really examine how this accounting figured into the  
19 earnings sharing mechanism reports that were filed  
20 by the company during these time periods and also  
21 if the accounting information was in any way,  
22 shape, or form used in projecting revenues for  
23 revenue requirements in any set of rates that the  
24 company has been allowed -- that these companies  
25 have been allowed.

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2 However, our initial evaluation  
3 to this point is that we don't believe that  
4 ratepayers have been harmed. We don't believe that  
5 ratepayers have been harmed in United Water New  
6 York revenue reconciliation mechanism because it  
7 properly reflected the recovery of forty point two  
8 million dollars in revenues for the nine-month  
9 period and not the incorrectly booked forty-seven  
10 point three million dollars. The ratepayers did  
11 not pay for that seven point one million dollars  
12 that was improperly booked on the company's  
13 records.

14 Another important point, too, is  
15 that, although we haven't traced this down to  
16 ground, if the earnings sharing reports that they  
17 have made -- United Water New York made reflected  
18 this higher level revenues, this would only inflate  
19 earnings that would be subject to sharing. So we  
20 don't think there would be alarm there.

21 And so we have to trace these  
22 things through, but we really at this point, don't  
23 have any clear convincing evidence of harm.

24 Now, we recommend that we be able  
25 to complete our investigation and that we also

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2 believe that we would like to look at the PWC  
3 reports -- audit reports when they're completed.  
4 We will monitor the work and when the reports are  
5 issued by PWC, we will review the reports plus the  
6 underlying work papers, and ask questions where we  
7 feel it's necessary to get a full story. We hope  
8 that -- we've been told in interrogatory responses  
9 from the company that they should have this  
10 completed by the end of the first quarter of this  
11 next year. And we will report back to you after we  
12 complete our investigation and determine what  
13 action to take. But at this time, we believe that  
14 temporary rates are not appropriate.

15 CHAIR ZIBELMAN: Thank you.

16 So -- I appreciate that.

17 And I think that if I recall,  
18 there's not actually a motion in this particular  
19 case. It's in other cases that we are getting  
20 petitions. Is that right? I saw a note from the  
21 chief judge this morning to that effect.

22 Maybe, David, you want to  
23 respond?

24 A.L.J. VAN ORT: There was --  
25 there is in other cases. There was also a

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2 supplement in -- a supplemental brief that was  
3 filed in the ongoing rate cases, the New Rochelle  
4 and Westchester cases. That brief was untimely and  
5 it was basically based on -- basically based on --  
6 I probably shouldn't even say that. It was  
7 predicated on the newspaper article only. It was  
8 an early brief that was filed. It's not addressed  
9 as part of the order because of this other  
10 investigation that's going on.

11 CHAIR ZIBELMAN: Okay. So --

12 A.L.J. VAN ORT: But there are  
13 other ones in the other --.

14 CHAIR ZIBELMAN: Thank you.

15 So I guess, you know, two  
16 observations. And one is is that in the event the  
17 completion of the investigation does reveal some  
18 irregularity that impacted rates, we do have  
19 prospective remedies that we can put into place so  
20 the fact that we decide not to put in temporary  
21 rates on this rate case does not prevent the  
22 Commission from doing a forward adjustment on  
23 rates. I assume that's right; correct? I'm seeing  
24 heads nod.

25 MS. HARRIMAN: That's correct.

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2 CHAIR ZIBELMAN: So with that,  
3 you know, my view is is that, number one, in this  
4 instance, I did get a call from the company, but,  
5 you know, I think it's really important when these  
6 things are discovered that we get the notice  
7 immediately. I'm appreciative of the fact that the  
8 Staff has started the investigation, that we're  
9 going to have an independent accounting firm take a  
10 look at it, and that all indications that if there  
11 was any adverse effect, it was probably on the  
12 earnings side as opposed to the rate-making side.

13 So with -- I am very comfortable  
14 then in moving forward and ruling on the pending  
15 joint proposal on the rate case. And in terms of  
16 that, it seems like ages ago since you talked to us  
17 about it, David. I don't have any questions. I  
18 think that, you know, like most joint proposals,  
19 when we see them, we had many different parties  
20 involved in this with different economic interests.  
21 I am very appreciative of the work that they did.  
22 I think we've imposed some conditions moving  
23 forward that are consistent with what we've done  
24 otherwise in other cases to help protect consumers.

25 Certainly in the areas of looking

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2 at ways for conservation, that sort of remains an  
3 important part for all water companies. But in  
4 this instance, too, I think that having the  
5 three-year rate plan and the moderating effect of  
6 that's important.

7 It is concerning, I think, for me  
8 and I expect the other Commissioners, too, you  
9 know, when we have this situation where we are  
10 having these significant rate increases associated  
11 with both taxes and purchase of water that are  
12 really, in a way, non-controllable expenses and it  
13 makes it even harder for us as we are trying to  
14 maintain the price of water to address it and it's  
15 a continuous dilemma. But under obviously our  
16 statutory obligation, we have an obligation to  
17 allow for the company to recover legitimate costs  
18 of providing service, which include taxes and, in  
19 this case, purchase of water, and as well as  
20 investments that they're making -- that they have  
21 to make.

22 So while I think none of us like  
23 to see rate increases of this type, I appreciate  
24 the work done by the Staff, the parties, the  
25 company in looking for ways to moderate it. And I

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2 intend to vote in favor of it. So with that, I'll  
3 open it to any other questions or comments.

4 COMMISSIONER ACAMPORA: I'll take  
5 a shot here.

6 CHAIR ZIBELMAN: And you have no  
7 feelings about this; right?

8 COMMISSIONER ACAMPORA: Oh, well,  
9 let's not even go there. We'll be sitting here for  
10 the rest of the day.

11 Dave, I wonder if you could just  
12 briefly explain that when you have a merger like  
13 this and you have one company here, the other one  
14 down here, we're trying to bring them together,  
15 we're doing a three-year rate case, when do you  
16 actually see where there will be that flat line  
17 between the two companies?

18 A.L.J. VAN ORT: I couldn't  
19 predict when that would occur. Usually it's based  
20 upon when the companies have costs that start --  
21 start equalizing between the two systems. I could  
22 give you an example. Here, Westchester's costs are  
23 lower than New Rochelle's. New Rochelle, in the  
24 last case which had a large hit, was due primarily  
25 to the Delaware interconnection project which was

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2 coming online. And that accounted for, I think,  
3 seventy-five percent of their increase in the last  
4 case.

5 On the Westchester side of the  
6 system, they could foresee a project coming --  
7 coming into existence somewhere down the road. And  
8 it's referred to as Rye Lake. There are certain  
9 requirements that -- I believe this one was for  
10 filtration. And they are exploring the options as  
11 to whether or not United Water Westchester could  
12 use that as a system, either by itself or in  
13 conjunction with the Westchester Joint Waterworks.  
14 If that happens, the filtration of that -- the cost  
15 for filtration would have to be recovered from the  
16 customers, which includes United Water Westchester,  
17 increase in their cost. So basically what it is --  
18 is we bring their costs up closer to where United  
19 Water New Rochelle is.

20 COMMISSIONER ACAMPORA: Right.

21 Okay. And maybe, Kim, and you  
22 can put it in such wonderful terms, if you could  
23 explain, so that it is on the record, how the new  
24 state law affects what we are talking about with  
25 regard to fire hydrants and --?

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2 MS. HARRIMAN: Yes.

3 CHAIR ZIBELMAN: It's our  
4 favorite statute.

5 MS. HARRIMAN: So the -- certain  
6 areas of the state, because it is not throughout  
7 the entire state, we were able to pass legislation  
8 that the governor signed that allows municipality,  
9 after certain procedures are accommodated,  
10 including notice requirements, resolution, a vote,  
11 to basically shift the cost of fire hydrants out of  
12 the municipal budget to the general body of  
13 ratepayers. And we've had a number of cases that  
14 have come before the Commission because the  
15 Commission was also included as far as taking some  
16 action.

17 And I hate to say this; it was a  
18 purely administrative action on your part in  
19 accepting the filing by the municipality in  
20 requesting this move of the cost of the hydrant  
21 service over to the general body of ratepayers. So  
22 you didn't have a choice of really saying yes or  
23 no, as long as the administrative process laid out  
24 in the statute was followed. Again, it was an  
25 administrative act on your part.

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2 As David mentioned, this is one  
3 of the first times now we are seeing the impact of  
4 those requests, the law -- the subsequent requests  
5 being brought into a rate-setting process.

6 Did I say anything wrong, David?

7 A.L.J. VAN ORT: No, you didn't.

8 The only thing to probably add to  
9 that is that one of the things that the law also  
10 provides is essentially that the municipality that  
11 achieves this change is expected, in the next year,  
12 to back those costs out of its budget. So  
13 therefore, at some point, you know, the ratepayers  
14 or the customers, residents will see some sort of  
15 benefit. What the criticism that we heard at the  
16 public statement hearing is what the residents will  
17 also lose is they will lose the tax write-off.  
18 When it was charged to them in their property  
19 taxes, they were writing those off on their income  
20 taxes.

21 COMMISSIONER ACAMPORA: Is there  
22 a mechanism where communities opt out of this?

23 A.L.J. VAN ORT: Well,  
24 essentially is they apply for it. That's a good  
25 question. You mean to reverse what they've already

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2 done?

3 COMMISSIONER ACAMPORA: It's not  
4 opting out; it's opting in.

5 MS. HARRIMAN: No; it --.

6 CHAIR ZIBELMAN: Communities can  
7 chose not to.

8 MS. HARRIMAN: Right, they can.  
9 In fact, we have, I think a few, I don't know,  
10 Bruce, maybe a couple that have not opted in at  
11 this point after following, again, that procedure.  
12 But Bruce has all the charts on this one.

13 MR. ALCH: All right. There are  
14 approximately three communities in the New Rochelle  
15 territory that have not opted into this law as of  
16 yet.

17 COMMISSIONER ACAMPORA: So there  
18 again, how is that balance achieved?

19 MS. HARRIMAN: Is that a  
20 rhetorical question?

21 COMMISSIONER ACAMPORA: I hate to  
22 say it.

23 CHAIR ZIBELMAN: Isn't it -- I  
24 mean what we -- in this rate order, it's very  
25 complex --

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2 COMMISSIONER ACAMPORA: So  
3 complex.

4 CHAIR ZIBELMAN: -- in terms that  
5 some rates reflect it; some don't. And we will  
6 just need to adjust it. I understand the company  
7 feels that it can do that, you know, reflect  
8 where -- how the pass-through is, but it is  
9 complex.

10 COMMISSIONER ACAMPORA: And Joe,  
11 when do you expect that this investigation will be  
12 thoroughly vetted and complete?

13 MR. LOCHNER: Well, we hope  
14 that -- the company, in a supplemental response to  
15 question twelve of the second set of  
16 interrogatories, said they expect to have the PWC  
17 audit -- the Pricewaterhouse audit reports  
18 completed in three months.

19 And of course, we have, for one,  
20 we want to get monthly status reports from them on  
21 the progress of the work. I would think that when  
22 we get those reports, we'll immediately want to  
23 look at the reports, but also the underlying work  
24 papers. That will probably take about a month. So  
25 I mean, a little time to look at what they have

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2 produced and to have meetings with the company and  
3 the outside orders.

4 In the meantime, we are going to  
5 be doing our own work also on information that has  
6 been reported to us. And we have access to the  
7 books and records. So I think it is probably, I  
8 would say, three to four months, we'll have a good  
9 idea what the full story is.

10 COMMISSIONER ACAMPORA: Okay.

11 Just another question to follow up on that. I  
12 mean, we are doing a rate case. The company has  
13 other companies within New York United Water. And  
14 I'm kind of wondering how this investigation and  
15 having their own investigation, how that affects  
16 the market. The market looks at this with regard  
17 to if they are going out and they want to borrow  
18 money for capital projects, will this be something  
19 that will hurt the company and then follow through,  
20 hurting ratepayers?

21 MR. LOCHNER: Well, I think  
22 that -- I think by investigating to first develop  
23 the solid evidence to take action is a reasonable  
24 approach. I think that the market has to accept  
25 that. You have to deal with the facts. And so I

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2 don't see it as being a harm to the companies and  
3 their credit rating in that respect. There's no  
4 way we can avoid it.

5 COMMISSIONER ACAMPORA: Okay.

6 Thank you.

7 CHAIR ZIBELMAN: I would  
8 anticipate, though, and it's normal in these  
9 situations, to the extent there are accounting  
10 irregularities, it is going to be picked up also by  
11 the company's regular auditors and they'll have to  
12 be looking at controls moving forward to see if  
13 their controls are sufficient. And that's going to  
14 be of interest to us as well.

15 So and the question is is if they  
16 see this as a one-time offender -- or a failure of  
17 the controls and I am going to guess that's going  
18 to come out of the audit.

19 MR. LOCHNER: And by that way, by  
20 the way, they had to restate their earnings and  
21 file -- restate financial statements under their  
22 credit agreements, under their various loan  
23 agreements with their creditors because of this.

24 CHAIR ZIBELMAN: But to  
25 Commissioner Acampora's point, one of the things

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2       that we can ask the Staff to do, and I'll ask them  
3       now, is when we come back even with respect to, you  
4       know, understanding the impact on rates, is to  
5       understand if there is any impact on the financing  
6       costs of the company that we should also be  
7       considering moving forward that are related to this  
8       incident, as opposed to anything else.

9                                   MR. LOCHNER:   Yes.

10                                  CHAIR ZIBELMAN:  Thank you.

11                                  Any other further comments?

12                                  Okay.  With that, everyone  
13       prepared then to proceed?

14                                  Well, then all those in favor of  
15       the recommendation to adopt the joint proposal,  
16       with the modification noted in the order, and  
17       approve the merger of United Water Westchester into  
18       United Water New Rochelle, as well as establish a  
19       three-year rate plan, please indicate by saying  
20       aye.

21                                  COMMISSIONERS:  Aye.

22                                  CHAIR ZIBELMAN:  Any opposed?

23                                  There being no opposition, the  
24       recommendation is adopted.

25                                  So thank you, Mr. Ort and Mr.

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2 Lochner.

3 Is everyone okay to proceed?

4 Okay. Then we will move on to the next item.

5 A.L.J. MORENO: Good morning,

6 Chair and Commissioners.

7 I am presenting this item today  
8 on behalf of the advisory staff team that reviewed  
9 and analyzed the record in this case.

10 CHAIR ZIBELMAN: Okay. Just so  
11 everyone knows, this is Ashley Moreno --

12 A.L.J. MORENO: Sorry.

13 CHAIR ZIBELMAN: -- and she's the  
14 administrative law judge. And we're talking about  
15 the United Water's developments of a new term -- a  
16 long-term water supply. It's item number 403.

17 A.L.J. MORENO: Thank you.

18 CHAIR ZIBELMAN: But welcome.

19 A.L.J. MORENO: Thank you.

20 CHAIR ZIBELMAN: She has other  
21 things she has to get on with in her life, so we  
22 need to do this fast.

23 A.L.J. MORENO: This is true.

24 This case was initiated in July  
25 of 2013 to assess the need for -- for a significant

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2 new water supply source in United Water New York's  
3 service territory. United Water has proposed to  
4 resolve its water supply concerns by utilizing the  
5 Hudson River as a new source of water supply.

6 To do that, United Water would  
7 have to construct a desalinization plant to make  
8 the water useable for drinking. United Water has  
9 proposed constructing such a plant, known as the  
10 Haverstraw Project, in three separate phases. It  
11 currently has permits pending before the Department  
12 of Environmental Conservation for this project.

13 There is significant public  
14 opposition, both from public officials and from the  
15 general public with regards to using the -- excuse  
16 me -- using the Hudson River as a supply source.

17 At the beginning of this case,  
18 United Water was instructed by the Commission to  
19 file a report with recent information regarding  
20 projected demand for a new water supply source.  
21 Public statement hearings and a public comment  
22 period were established to allow for the public to  
23 comment on United Water's report and the need for a  
24 new water supply source.

25 The public statement hearings



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2 more specifically, to the Haverstraw Project. The  
3 comments are summarized in the order in the draft  
4 item you have before you.

5 There are two questions before  
6 you today. The first is whether there is a need  
7 for a long-term water supply source in United Water  
8 service territory. And the second question is  
9 whether it is appropriate at this time to open a  
10 proceeding to review whether United Water's pursuit  
11 of the Haverstraw Project was prudent.

12 As to the first question, it's  
13 recommended that the Commission finds that  
14 immediate need for a new supply source is delayed,  
15 but there remains a real likelihood that need for  
16 an additional long-term water supply source exists  
17 and that there may be a need for additional water  
18 supply by 2020.

19 However, we found and recommend  
20 that there's a small window of opportunity to  
21 explore alternatives to determine whether  
22 significant conservation measures and/or supply  
23 alternatives can be identified and executed to  
24 ensure adequate water supply for United Water  
25 Customers.

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2 It's, therefore, recommended that  
3 United Water conduct two separate studies and  
4 report back to the Commission with its analysis in  
5 six months. The first study should examine what  
6 conservation opportunities exist. And we suggest  
7 that they do so in collaboration with the Rockland  
8 County Joint Taskforce on Water Management. And  
9 the second study should examine the feasibility of  
10 developing additional smaller scale supply  
11 alternatives.

12 In addition, it's recommended  
13 that United Water submit quarterly reports to the  
14 Commission, commencing in January, describing  
15 actual water usage and supply levels so that if the  
16 reserve between supply and demand becomes too  
17 narrow, the Commission can be poised to act to  
18 ensure safe and reliable water service to United  
19 Water customers.

20 It's also important to note that  
21 in exploring the alternatives, it's recommended  
22 that the Commission receive input as well from the  
23 community and its representatives, as well. And  
24 the draft order would urge that the Rockland County  
25 Joint Taskforce on Water Management report to the



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2 CHAIR ZIBELMAN: Thank you very  
3 much, Ashley, and actually for the other Staff that  
4 has worked on this. I know Mr. McGowen and Mr.  
5 Alch were also heavily involved in this.

6 This has, you know, clearly been  
7 a long time proceeding in front of the Commission  
8 that's raised a lot of concerns. And certainly  
9 we've had an opportunity to meet with the members  
10 of the community who have come here and have  
11 expressed their concern about how do we move this  
12 forward, as well as other parties to this case.

13 You know, the way I look at this  
14 issue is is that the Commission has an obligation  
15 to make sure that the water is available for the  
16 community and it's safe. This is both a health and  
17 safety issue. It is particularly when we are  
18 talking about drinking water that we always are  
19 concerned about.

20 The situation that we are in is  
21 that from the forecasts that have been developed  
22 and looked at over for the next -- for the next  
23 five to fifteen years or three to fifteen years is  
24 that there's folks who are saying, hey, you know,  
25 this may not need -- may not materialize for ten or

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2 fifteen years.

3 On the other hand, we have a  
4 forecast that Staff has prepared that's consistent  
5 and looks at all of the factors that the Commission  
6 considers, which is what is the current level of  
7 demand, where is the economic growth in the  
8 community, what's happening in terms of the economy  
9 at large, what's the current water situation, to  
10 see if and at what period the community might be at  
11 risk in having insufficient water.

12 And the concern we have, as in  
13 any situation, is that because we are developing --  
14 we are relying on matters that are both within the  
15 company's control and matters that are exogenous to  
16 the company's control, we can't necessarily predict  
17 when that need may arise with a certainty that we  
18 could say, hey, on this date on 2026 we are going  
19 to need water; until that point, we are okay. It  
20 could be as early as 2020; it could be later. So I  
21 see this as a bounding issue.

22 The question is that are we doing  
23 everything we can to delay that effort and what are  
24 the things, the tools that we have to be able to do  
25 that, and to make sure that we're looking at

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2 conservation, that we're looking at leakage, we're  
3 looking at sort of everything we can to delay that  
4 effect, as well as maybe other municipal controls  
5 that could be placed in place, as well as rate  
6 design issues.

7 So what I see here is a great  
8 window of opportunity. And I am very pleased to  
9 see that the -- you know, the community is already  
10 engaged to start working with the company. And  
11 we're asking the company to, you know, not dust off  
12 the old plans, but actually put in new plans, bring  
13 in some new thinking as to what else we can do.  
14 And I would ask that Staff get engaged in this as  
15 well, because it's something we don't -- we can't  
16 afford to lose sight of.

17 We need to be thinking, you know,  
18 what are the plans. And we can start trying things  
19 so there is an element, I believe, of urgency that  
20 we need to stop fighting and sort of start getting  
21 on with it. Let's start looking for solutions,  
22 bring things back to the Commission. Don't feel  
23 the need to hesitate and say, well, let's wait for  
24 six months. If something comes forward and comes  
25 out in two months, three months, that we should

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2 start implementing, let's -- we'll do that.

3 And I think, you know, hopefully  
4 we can turn what has been a highly contentious and  
5 difficult issue for the community, certainly for  
6 the company, and for the Commission to -- I do not  
7 want to sound too Pollyannaish about it, but if we  
8 can find the right types of solution and the right  
9 types of programs that lead to much more aggressive  
10 conservation and reducing of leakage and non -- I  
11 cannot remember the acronym, but water that sort of  
12 isn't used, that's great. You know, maybe this can  
13 become sort of the profile that we want to achieve,  
14 as opposed to the thing that everyone is sort of  
15 anxious about.

16 But I think the most important  
17 thing and the message that I hope people will see  
18 in our order is that we can't simply say while  
19 supply will never be needed so, therefore, let's  
20 just go home. We have to plan for the worst and  
21 hope that that doesn't happen. But we have to plan  
22 and we need to take action so that we are in a  
23 position that we're not compromising health and  
24 safety, and are ahead of the game. So that's, you  
25 know, one big piece of it. So -- and it is

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2 bounded.

3 The other, I think, on the issue  
4 of prudence, it is clear to me, in looking at the  
5 record, looking at the orders of this Commission,  
6 looking at the determinations that were made at the  
7 time, which were based on the evidence at the time  
8 and the information, that the company pursued the  
9 desal plant with the good faith because it was  
10 directed to do so by the Commission.

11 So while we're going to be taking  
12 up the issue of the surcharge in the next  
13 proceeding, I am also comfortable in saying that to  
14 suggest that there was imprudence on the part of  
15 the company in developing the desal would be  
16 inappropriate. And we -- you know, one of the  
17 things that we like to -- we heard last week and I  
18 think is very important is that we provide  
19 confidence in our processes. And the fact that we  
20 have a new Commission sitting here today that is  
21 different than the Commission there, our scrutiny  
22 is not what we think today, but what was important  
23 then, what were the facts then, and therefore, what  
24 were the decisions then, what did the company due  
25 based on what they heard and what we directed.

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2 In that context, I think the  
3 record is pretty clear that the decision to move  
4 forward with the desal plant was very consistent  
5 with what the Commission was contemplating would  
6 happened or move forward with the design and the  
7 permitting. So I don't think that we can -- there  
8 is any basis to find imprudence on that.

9 So with that, I am prepared to  
10 vote in favor of instructing the company to not  
11 pursue the desal plant at this time, to start  
12 working with the community. Let's look for  
13 alternatives. Let's keep our eyes on the ball.  
14 Let's come up with some creative ideas and let's  
15 solve what has been a very, very challenging and  
16 emotionally charged atmosphere in this community.

17 COMMISSIONER BROWN: Yeah, I  
18 just want to build quickly on your points there. I  
19 can be much more accurate predicting the winner of  
20 the Super Bowl in 2007 than I am going to be in  
21 2021. It's much easier, once you know what  
22 happens, to go back and say that's what we should  
23 have done eight years ago. But you don't know  
24 everything that's going to happen. You don't know  
25 how the world changes. And determinations were



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2 CHAIR ZIBELMAN: Thank you.

3 Commissioner Acampora?

4 COMMISSIONER ACAMPORA: Good

5 history lesson, Garry.

6 And that's the one thing that the  
7 Commission and any Commission that sits up here has  
8 to remember that favorite word of mine,  
9 flexibility.

10 And I think, thanks to the Chair  
11 and her direction to the Staff, we are doing just  
12 that. We have listened to the people. Those  
13 public statement hearings were extremely important.  
14 And I think that we do have an opportunity to work,  
15 everyone, together, not just pointing fingers at  
16 each other, but to come up with a reasonable  
17 solution to look at this, but to remain mindful  
18 that we need to have a good working plan for the  
19 future.

20 We just don't want to push  
21 everything off and then, all of a sudden, someday,  
22 when some of us won't be sitting here, all of a  
23 sudden the sky is falling and there is no plan to  
24 address what happens. So I think we have -- there  
25 are some wonderful people who spoke at the public

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2   statement hearings.  They're knowledgeable.  I  
3   think the company will now be open to listening and  
4   working with all of them.  And I think for the  
5   benefit of the people in the area who will be  
6   affected that this is probably the best outcome  
7   that we can support.

8                                   CHAIR ZIBELMAN:  Thank you.

9                                   Commissioner Sayre?

10                                  COMMISSIONER SAYRE:  I agree with  
11   the comments of the Chair and my fellow  
12   Commissioners.  I recognize the community's deep  
13   concerns about the desal plant and I heard those  
14   concerns loud and clear at those public statement  
15   hearings that ran until well after midnight.

16                                  We're in luck here because we  
17   have some breathing room to see if conservation or  
18   other resources or structural changes in demand or  
19   any other factors that affect supply or demand in  
20   the future can either further postpone or  
21   completely eliminate the need for this plant.

22                                  But as regulators, we cannot  
23   allow Rockland County to slide into a situation  
24   where it runs out of safe water.  If more supply is  
25   required, we need to get it into place in time to

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2 meet the need. So in this window of breathing room  
3 and opportunity, I also urge the county, the  
4 municipalities, citizens groups, Staff, and all  
5 other stakeholders, along with the company, to come  
6 up with something that works. But please recognize  
7 that when this comes up before us again, we are  
8 going to have to be reasonably conservative in  
9 forecasting and planning so that we do not put  
10 water supply at unacceptable risk.

11 CHAIR ZIBELMAN: Thank you.

12 Commissioner Burman?

13 COMMISSIONER BURMAN: Thanks.

14 I think what everyone said is  
15 very important. And I don't think I really have  
16 anything substantively to add except that I am  
17 going to be looking at what happens next. And I  
18 think it is important that folks come prepared to  
19 roll up their sleeves and figure out some  
20 solutions. So I am looking forward to what I hope  
21 is a solution that works for the community and New  
22 York as a whole. Thanks.

23 CHAIR ZIBELMAN: Thank you.

24 So looking forward to hearing how  
25 this proceeds, I know that the Rockland County

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2 Taskforce is already engaged. I think that's a  
3 great thing. I know that the folks there are  
4 really looking for alternatives. I don't think  
5 anyone, either, in that community, wants to put the  
6 people in that community at risk for not having  
7 adequate and safe drinking water. And what's so  
8 important, I think, is, as Commissioner Brown and  
9 my fellow Commissioners said, is let's get on with  
10 it, let's move forward, and find a better solution.

11 So with that, all those in favor  
12 of the recommendation to find that the need for the  
13 major long-term water supply is delayed, but with  
14 the recognition that there is going to be a  
15 long-term need and we need to look at alternatives,  
16 as well as the recommendations with respect to  
17 prudence, please indicate by saying aye.

18 COMMISSIONERS: Aye.

19 CHAIR ZIBELMAN: All those  
20 opposed?

21 Hearing no opposition, the  
22 recommendation is adopted. So thank you.

23 The fifth item for our discussion  
24 today is then also a related case. And it concerns  
25 the petition for United Water for implementation of

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2 a long-term water surcharge, presented by Judge  
3 Casutto.

4 And thank you, Judge Moreno.

5 Welcome, Kevin.

6 A.L.J. CASUTTO: Good afternoon,  
7 Chair Zibelman and Commissioners.

8 In June 2013, United Water New  
9 York filed a petition for a surcharge to collect  
10 carrying costs on its development of a new  
11 long-term water supply source. The company  
12 identified fifty-two point one million dollars of  
13 actual project costs through March 31st, 2013, and  
14 later updated its costs through December 31st,  
15 2013. However, only the costs through March 31st  
16 were litigated.

17 Under the Commission's uniform  
18 system of accounts, or USOA, carrying costs are  
19 identified as allowance for funds used during  
20 construction, or AFUDC. If the surcharge were  
21 granted, the AFUDC amount calculated annually would  
22 be approximately six million dollars in the first  
23 year of the surcharge.

24 The case was fully litigated.

25 Five days of hearings were held in May of 2014.

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2 Many parties with diverse interests participated in  
3 the hearing process. Actively participating  
4 parties, in addition to the company and Staff,  
5 included the Department of State's Utility  
6 Intervention Unit, representatives of the Rockland  
7 County Executive, and Rockland County Attorney's  
8 office, and the Town of Ramapo.

9 The proposed order before you  
10 today would deny the surcharge at this time, and  
11 would determine the amount of project costs through  
12 March 2013 that are subject to recovery, and would  
13 clarify accounting principles relevant to AFUDC.  
14 rate methodology and calculation. Those principles  
15 pertain to amounts that the company is carrying on  
16 its books related to this project. Lastly, the  
17 order would determine the treatment of legal  
18 services costs for which the company asserted  
19 privilege and provided redacted documentation.

20 In the 2010 rate order, the  
21 Commission provided a new surcharge provision,  
22 allowing the company to collect AFUDC. or carrying  
23 costs after substantial construction of the project  
24 had commenced. A surcharge is an exception to the  
25 general rate-making principle that before

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2 ratepayers bear the cost of a regulatory asset, the  
3 asset should be placed in service.

4 United Water acknowledges in its  
5 petition that construction hasn't occurred, but  
6 they assert that their environmental permit review  
7 before the state DEC has been delayed without  
8 explanation and, further, that the company has done  
9 everything within their control consistent with the  
10 directives of the 2006 and 2010 rate orders to  
11 develop the new water supply source. In addition,  
12 the company asserts that implementing a surcharge  
13 now would avoid additional buildup of ratepayer  
14 liabilities.

15 The proposed order finds that in  
16 establishing the in-construction trigger for  
17 initiating the surcharge, the Commission struck the  
18 right balance between protecting ratepayers and  
19 allowing the company some recovery of project costs  
20 for development of this significant multi-year  
21 project. The order would deny the surcharge in  
22 view of the determination in the companion need  
23 case that was just discussed and also because the  
24 project construction trigger of the 2010 surcharge  
25 provision has not been met. However, the denial

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2 would be without prejudice to the company to renew  
3 its request for a surcharge in the future.

4 Because the case was fully  
5 litigated, the order would determine that  
6 approximately forty million dollars of project  
7 costs incurred through March 2013 are subject to  
8 recovery at a later date. In addition, potentially  
9 over four million dollars in legal services costs  
10 are potentially subject to recovery, as I will  
11 explain later in this presentation.

12 However, costs determined in this  
13 order would be subject to adjustment, if any,  
14 resulting from matter 14-02068, the recently  
15 instituted investigation that Joe Lochner spoke  
16 about earlier this morning.

17 The first accounting principle  
18 addressed in the order concerns the proper rate  
19 methodology used to calculate AFUDC. There are two  
20 relevant time periods regarding AFUDC. rate  
21 methodology. First, the term of the 2006 rate  
22 order and, secondly, the term of the 2010 rate  
23 order and subsequently.

24 For the term of the 2006 order,  
25 the proposed order would approve the company's

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2 AFUDC. rate methodology because that methodology  
3 was based upon the consolidated capital structure  
4 of United Water New York's parent corporation,  
5 United Water New Jersey, and it included lower cost  
6 short-term debt. Therefore, the benefit of that  
7 lower cost short-term debt was already being  
8 applied to ratepayers' benefit in that time period.

9 For the term of the 2010 rate  
10 order, and subsequently, the rates the Commission  
11 approved were not based on the consolidated parent  
12 corporation, but instead, were set based solely on  
13 an assumed mix of long-term debt and equity.

14 After the 2010 rate order was  
15 issued, the company recognized an opportunity in  
16 the short-term debt markets and met most of its  
17 financing needs for the project through short-term  
18 debt. The effect of the company's methodology  
19 would charge customers through the AFUDC. rate for  
20 a cost of capital for the project at the higher  
21 rates assumed for rate-making purposes in the 2010  
22 rate order, even though the company actually  
23 experienced much lower short-term borrowing costs  
24 during this period.

25 For the term of the 2010 rate



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2 Lastly, regarding legal services  
3 costs, United Water provided heavily redacted  
4 documentation to support approximately four point  
5 four million dollars of legal services  
6 expenditures, asserting attorney-client privilege.  
7 Although the parties did not contest the  
8 redactions, the redacted documentation did not  
9 provide sufficient information for Staff to conduct  
10 an audit of these legal expenditures.

11 The proposed order would disallow  
12 the four point four million dollars of legal  
13 services expenditures without prejudice to the  
14 company to re-file a claim for these costs at a  
15 later time, supported by sufficient documentation  
16 to allow for a Staff audit.

17 In sum, the proposed order would  
18 deny the surcharge, without prejudice to renew, and  
19 determine that approximately forty million dollars  
20 of project costs through March 2013 are subject to  
21 recovery at a later time.

22 That concludes my presentation.  
23 Are there any questions from the Commission?

24 CHAIR ZIBELMAN: Just -- I have  
25 just a question. And either you or I see Doris is

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2 here, too, so I just want to -- or John.

3 She just punted to you, John.

4 So the question is this: It's  
5 just to be clear about what we're doing and what  
6 we're not doing today. Effectively, what the  
7 company has requested is for the Commission to  
8 modify its 2010 order and allow for the  
9 commencement of collection of the surcharge prior  
10 to construction. And the justifications given were  
11 obviously the timing and the issue with the  
12 continued collection of interest that could be  
13 affected.

14 That, you know, as you said, it's  
15 unusual to allow for a collection of a cost for an  
16 asset that's yet to be constructed. It's even more  
17 unusual to do it before construction is even begun.  
18 And so I would agree that good cause in this  
19 instance isn't necessarily extant to say that we  
20 should start recovery this early. But what we're  
21 doing by the filing or the order today is  
22 essentially saying there are a number of the issues  
23 that have been litigated in terms of the amount or  
24 the costs that should be included in the surcharge  
25 that we need to give finality over. And we're

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2 providing that finality so we know what's in this  
3 bucket. And I think that will be helpful.

4 So again, as our theme around  
5 this, let's move on and we get that finality. Then  
6 what's open then is the question of timing. And  
7 the question of timing is going to be somewhat  
8 dependent upon what's next. And so what I  
9 understand in this order, and I just want to be  
10 very clear on this, is that in the event the  
11 determination is subsequently made, that there we  
12 do not need the desal alternative, and other  
13 alternatives will be available.

14 The order today, because it's  
15 without prejudice, is allowing the company to come  
16 back at that time and seek recovery even though the  
17 desal plant ultimately is not done. So there's  
18 nothing in this order that precludes the company or  
19 suggests that there is an impairment of these  
20 expenses and, in fact, just recognizes that  
21 typically until an asset is actually used or under  
22 construction, we don't allow for recovery of  
23 expenses associated with that asset.

24 Just so no one walks off and  
25 says, oh, if we don't do the desal plant, that

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2 means the surcharge is gone. We're not saying  
3 that. And that will be an issue that is developed  
4 when, at the time, we determine what solution is  
5 there.

6 Is that correct? And I know it's  
7 reflected in the order.

8 A.L.J. CASUTTO: Yes.

9 CHAIR ZIBELMAN: Thank you.

10 I appreciate, by the way, you  
11 know, the amount of work that's gone on this. I  
12 know it was a heavily litigated case. I agree with  
13 the adjustments that were made and, as indicated, I  
14 appreciate the fact that the company wants to  
15 appreciate -- in the sense I understand the company  
16 wants to keep legal information confidential, but  
17 we can't do our work of looking at the accuracy or  
18 validity of expenses if we can't audit them. So it  
19 is really up to the company to determine, if they  
20 believe that these are costs that should be  
21 included in the surcharge, to waive their rights,  
22 which is their right to do, around legal privilege.

23 So we'll take that up in the  
24 future. But with that, I am prepared to vote in  
25 favor of this recommendation. And I will open it

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2 up for any other questions or comments.

3 COMMISSIONER SAYRE: I also  
4 support the Staff recommendation. I have been a  
5 utility attorney in the past and I urge Staff that,  
6 should the company come in with that four and a  
7 half million dollars' worth of legal expenses and  
8 the details of those expenses, to take a good hard  
9 look because, as a utility attorney, I did spend a  
10 good deal of time reviewing advertisements,  
11 outreach, education, consumer communications. And  
12 we'll want to take a look at whether those expenses  
13 relate to anything that we've disallowed.

14 Thank you.

15 CHAIR ZIBELMAN: Thank you.

16 Commissioner Burman?

17 I think that to a person, we are  
18 all aware these are a very significant level of an  
19 expense. Included in the surcharge was a pilot  
20 plan, so this just -- there were costs and  
21 engineering costs associated with it. But clearly  
22 I think that the Staff and parties scrubbed all the  
23 expenses that are currently included in the  
24 surcharge. And if, in fact, legal expenses come  
25 in, we would expect them to be scrubbed as well.

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2 So with that, I will take a vote.

3 All those in favor of the Staff recommendation to  
4 deny the petition to implement the new long-term  
5 water supply surcharge, require the company to  
6 conform its book to the accrual levels consistent  
7 with the recommendations, and note again that this  
8 is without prejudice to re-filing, indicate by  
9 saying aye.

10 COMMISSIONERS: Aye.

11 CHAIR ZIBELMAN: Opposed?

12 Hearing no opposition, there  
13 being none, the recommendation is adopted.

14 Thank you, Mr. Casutto, for a job  
15 well done.

16 A.L.J. CASUTTO: Thank you.

17 CHAIR ZIBELMAN: Complicated  
18 cases today. Thank you all for that. And there  
19 were absolutely no water puns. I don't know. I'm  
20 waiting. I'm waiting for Commissioner Brown.

21 COMMISSIONER BROWN: Very fluid.

22 CHAIR ZIBELMAN: That was very  
23 fluid? Thank you.

24 Okay. We'll move to the consent  
25 agenda. Are there any -- first of all, do any of

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2 the Commissioners want to recuse or abstain from  
3 voting on the consent agenda?

4 Okay. Then with that and no  
5 comments, I'm going to then -- all those in favor  
6 of the recommendations on the consent agenda,  
7 please indicate by saying aye.

8 COMMISSIONERS: Aye.

9 CHAIR ZIBELMAN: Opposed? There  
10 being no opposition, hearing none, the  
11 recommendations are adopted.

12 Secretary Burgess, is there  
13 anything more in front of us today?

14 MS. BURGESS: There is nothing  
15 more for today. The next Commission session will  
16 be December 11th. It's noted on the website that  
17 it is December 4th, but it has been changed to  
18 December 11th, ten thirty, right here.

19 CHAIR ZIBELMAN: Great. Thank  
20 you.

21 And have a good rest of your day  
22 everyone. Thank you.

23 (The meeting concluded at 12:39  
24 p.m.)

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STATE OF NEW YORK  
I, Howard Hubbard, do hereby certify that the foregoing  
was reported by me, in the cause, at the time and place,  
as stated in the caption hereto, at Page 1 hereof; that  
the foregoing typewritten transcription consisting of  
pages 1 through 111, is a true record of all proceedings  
had at the hearing.

IN WITNESS WHEREOF, I have hereunto  
subscribed my name, this the 20th day of November, 2014.

Howard Hubbard, Reporter

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