

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 17, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 13-W-0303 - Proceeding on Motion of the Commission to
Examine United Water New York, Inc.'s
Development of a New Long-Term Water Supply
Source.

ORDER ADOPTING ALTERNATIVE DEMAND/SUPPLY
STRATEGIES AND ABANDONING HAVERSTRAW PROJECT

(Issued and Effective December 18, 2015)

BY THE COMMISSION:

INTRODUCTION

This order culminates an inquiry that began with a Joint Proposal in a 2006 United Water New York, Inc. (UWNY or the Company)¹ rate case that called for the development of new short, intermediate and a major long-term water supply.² UWNY responded to the long-term supply need by proposing a Hudson River desalination facility. In 2013 the Commission initiated this proceeding to re-assess the need for a new long-term water

¹ UWNY recently announced that United Water New York, Inc. changed its corporate name to SUEZ.

² Case 06-W-0131 et al., United Water New York, Inc. et al. - Rates and Merger, Order Approving Merger and Adopting Three-Year Rate Plan (issued December 14, 2006) (2006 Order).

supply source serving customers in Rockland and Orange Counties in light of new circumstances.³ In this order, we affirm our earlier determination in November 2014 that additional sources of water in Rockland County remain necessary, and we address a proposal made by UWNYS in response to the Commission's November 2014 Order⁴ for alternatives to the construction of a desalination plant in the Town of Haverstraw (the Project).

Our decision today is based on the changing dynamics of water supply and demand in UWNYS's service territory. The record developed in this case demonstrates that the deployment of multiple sources to meet ratepayers' needs will keep supply and demand in balance for at least ten years. Achieving that result will require the aggressive pursuit of water conservation measures by UWNYS and the local communities; the Commission, the Company, and the localities will all need to continue to work together to ensure the new approach is successful.

Based upon the willingness of the Company and the local communities to pursue water conservation, we find that the water supply and demand management measures proposed by UWNYS provide reasonable assurance that the Company can meet projected service area needs for the next decade. In light of that finding, we direct the Company to abandon its plan to construct the Project. We also direct the Company to (i) continue planning for short and long-term lost water mitigation measures, conservation opportunities, and other incremental supply additions; and (ii) continue filing quarterly reports of supply and demand, as required by the November 2014 Order. We further require the Company to provide details on the specific programs,

³ Case 13-W-0303, United Water New York, Inc. Long-Term Water Supply, Order Instituting Proceeding (July 19, 2013).

⁴ Case 13-W-0303, supra, Order Addressing Status of Need and Directing Further Study (issued November 17, 2014).

costs, and implementation schedules for the measures it has proposed in this proceeding, including proposals for conservation-oriented rate structures, in its upcoming rate filing.

BACKGROUND

Concerns about the long-term sustainability of Rockland County's water supply have been growing over the past two decades. The current proceeding arises from the 2006 Order's determination that a new source would be needed by the end of 2015. In January 2007, the Company responded to that order with a proposal to build a new water intake pumping station and water treatment and desalinization facility in the Town of Haverstraw, capable of scaling up to 7.5 million gallons per day (MGD) of potable water from the Hudson River for Rockland County customers. The Company pursued development of the Project and filed an initial Draft Environmental Impact Statement with the Department of Environmental Conservation (DEC) in January 2008 and filed a draft Final Environmental Impact Statement and permit applications with DEC, as required by the State Environmental Quality Review Act, in December 2012.

Opponents of the Project petitioned the Commission to reconsider the need for a new long-term major water supply source. In July 2013, the Commission initiated this proceeding to revisit the issue in light of the changed circumstances that developed since 2006. In May 2014, Staff submitted a report on need and updated potable water demand forecasts for our review. In November 2014, after considering the record, the Commission found that the need for supply was delayed, but that there remained an ongoing need for additional long-term water supply. The Commission stated that additional supply might be needed by

approximately 2020, increasing to approximately 5 MGD by 2035, absent a reduction in water usage in UWNY's territory.⁵

In the November Order, the Commission also found that the near-term demand forecast allowed sufficient additional time for further consideration of possible alternatives to the Project, noting a "small window of opportunity" for the Company to explore "whether significant conservation measures" and "smaller increments of supply" could be identified.⁶

In order to take advantage of this opportunity, the Commission directed the Company to suspend permitting activity and directed UWNY to work with the Rockland Task Force (Task Force) on Water Resources Management, a coalition of local governmental representatives and concerned citizens, to develop measures that would reduce Rockland County water demand by 2 MGD.⁷ The Commission also required UWNY to evaluate other potential water supply projects that could provide an additional 2 to 3 MGD.⁸

Finally, the November Order recognized that local governments and citizens can have a critical role in managing finite water resources. We explained our concern that the conservation methods within the Company's control were not likely to eliminate the need for long-term supply sources and acknowledged that Task Force members and many other parties had expressed their commitment to solving the problem with demand-

⁵ Case 13-W-0303, supra, Order Addressing Status of Need and Directing Further Study (November 17, 2014)(the November Order), at 65.

⁶ Ibid. at 3.

⁷ Ibid. at 66-67.

⁸ Ibid. at 67.

side solutions.⁹ We welcomed this community-driven commitment to conservation and urged the Task Force to contribute a report "on its plans for adopting feasible conservation options and the demand reductions associated with those measures."¹⁰

On June 30, 2015 the Company responded to the Commission's directives with the filing of a report, titled "Report on the Feasibility of Incremental Water Supply Projects and Conservation Opportunities in Rockland County, New York" (the Feasibility Report). The Company proposed a package of conservation, water management measures, and smaller incremental supply alternatives that it maintains collectively have the potential to realize the targeted savings.¹¹

On July 21, 2015, the Task Force filed a report prepared by its consultant Amy Vickers & Associates, "Water Losses and Customer Water Use in the United Water New York System" (Vickers Report). The Vickers Report examines "the extent to which system water losses ... and customer (residential and nonresidential) water use in the UWNY service area are at, above, or below water industry standards ... for water use efficiency."¹²

UNITED WATER'S FEASIBILITY REPORT

UWNY's Feasibility Report examines potential conservation and water recovery options and a number of possible

⁹ Ibid. at 31-33.

¹⁰ Ibid. at 3. It is appropriate to note here that the Task Force, chaired by County Legislator Harriet Cornell, has consistently provided valuable contributions to these discussions and has been steadfast in its commitment to exploring innovative conservation solutions.

¹¹ Feasibility Report at 7-5.

¹² Vickers Report at ES-1.

incremental water supply projects. It concludes that a combination of the measures evaluated could reduce consumption through conservation efforts by approximately 1 MGD, recover approximately another 1 MGD through enhanced metering and aggressive leak reduction programs, and obtain between 1 and 3 MGD in additional supply.¹³ Based on these findings, and assuming successful implementation, the Company states that supply and demand "will remain in balance for the next ten years."¹⁴ At the same time, the Company advises that these measures in and of themselves are not sufficient to meet the projected needs for the longer-term.¹⁵

The Company's assessment considers several approaches, including (i) an evaluation of the likelihood for developing additional supply from new groundwater wells; (ii) options for new interconnections with other water suppliers; (iii) technical upgrades to optimize supply from existing sources; (iv) wastewater reuse; and (v) measures to increase conservation and water recovery.

The Company's review of the potential for new wells involved screening a number of locations with the greatest likelihood of producing good quality water within the utility's service area. Potential sites were evaluated for yield, impact on the aquifer, interference with nearby wells, and proximity to demand, water quality, and land control. The result was to identify ten sites that the Company believes may have a potential cumulative yield of about 2.2 MGD. These sites are proposed as candidates for additional testing and evaluation to

¹³ Feasibility Report at S-5.

¹⁴ Letter of Christopher J. Graziano (June 30, 2015) (Graziano Letter) at 2.

¹⁵ Comment of United Water New York, Inc. (October 5, 2015).

determine water quality, actual yield, and possible treatment requirements.¹⁶ The Company's estimates for the cost of developing these sites range from \$1.8 to \$4.6 million per well, with an expected average cost of approximately \$3.0 million per well. Noting a number of technical and environmental issues associated with the development of wells, UWNY expects that roughly half of 2.2 MGD of potential yield will be realized.

The Feasibility Report next examines several possible new interconnections with other suppliers: the Village of Suffern, the Village of Nyack, the North Jersey District Water Supply Commission, and the Borough of Montvale in New Jersey. While these represent potentially significant sources, ranging from 1 MGD to 5 MGD, the report identifies technical, cost, and regulatory uncertainties that may make them infeasible. Nevertheless, the Company proposes to continue to explore and develop these ideas for additional supply over the next several years.

UWNY's study also evaluates the feasibility of extracting more supply from the Ramapo River and the Ramapo River watershed by increasing production from its existing Ramapo Valley well field. Several possibilities are identified, such as augmenting flow in the river from Potake Pond or the Western Ramapo Advanced Wastewater Treatment Plant. The Company proposes to carry out a "study of the hydrological and hydrogeological capabilities of the Ramapo Aquifer and Ramapo watershed." This study will take two to three years to complete but is necessary to better understand the relationship between the well field and river flows and to make a more precise assessment of the potential for improving the well field's

¹⁶ Feasibility Report at 2-5.

production.¹⁷ The Company also looked at diverting water from Pine Meadow Lake but determined it was not feasible.

The Company's report re-considers the analyses of wastewater reuse that were included in the Project's Draft Environmental Impact Assessment (DEIS). In that analysis, reuse of stormwater or treated wastewater for non-potable purposes was found to offer only minimal increased potable water capacity, at very high cost. However, the DEIS reported that diverting tertiary treated waste water effluent to the Lake DeForest Reservoir or into the Hackensack River could increase the safe yield of the reservoir by as much as 7.5 MGD.¹⁸ All of the reuse scenarios evaluated would require expansion and upgrading of existing municipal wastewater and company owned potable water treatment systems, at costs which the Company estimates to be significantly higher than the capital cost of the Project.

The Feasibility Report next examines conservation and water recovery options. Existing conservation measures, which include customer education, discounts on water-saving devices, and a summer/winter water rate structure, will continue. The Company proposes several additional measures that it could undertake with this Commission's approval for funding mechanisms, such as helping municipal authorities develop conservation-oriented local ordinances, conducting water audits, and implementing a rebate program for customers who install water-saving appliances and irrigation tools. The Company estimates that a rebate program targeting toilets and washing machines could save approximately 0.5 MGD. It asserts that implementation of its proposed conservation measures, including appliance rebates for other water saving devices and irrigation,

¹⁷ Feasibility Report at 4-2 and 3.

¹⁸ Ibid. at 5-1.

could collectively reduce customer water consumption by 1 MGD over ten years.¹⁹

Water recovery options are measures to reduce the amount of water produced that does not provide revenue to the Company (NRW); in other words, treated water that is "lost" to the system. The Feasibility Report describes plans for controlling and reducing three categories of NRW: unbilled but unauthorized consumption, apparent losses, and real losses. To address these, the Company proposes several related investments in metering as well as accelerated investment in existing water main repair and replacement. The Company also proposes to install equipment allowing it to break down several of its large pressure districts into smaller zones in order to make it easier to detect areas where leaks may be significant and repairs or improvements may be necessary. UWNY proposes to create four such sub-districts over the next two to three years at an estimated cost of \$10.5 million. The Company asserts that its affiliate United Water Westchester has used this approach and found that real losses represent 60% of NRW in a similar system. Based on its experience with recovery of those losses in Westchester, the Feasibility Report estimates that the Company can recover between 0.5 and 1 MGD of NRW by implementing more granular metering and targeted system repairs or improvements.

The Feasibility Report further advises that the Company's proposals are somewhat conservative and that there may be opportunities to achieve water savings beyond the proposed

¹⁹ Feasibility Report at 6-3. We note that the Company's estimate of the savings that could be achieved through an appliance rebate program focused on toilets and washers is in line with the low end of the estimate for the same type of program submitted November 7, 2013 in this proceeding by Dr. Stuart Braman, who is an adjunct associate research scientist at Lamant-Doherty Earth Observatory at Columbia University. That estimate is .69 MGD in savings.

target. At the same time, the Company observes that a conservative approach is prudent given the many factors that are outside its control. UWNY also cautions that if short-term supply projects prove to be insufficient to meet the system needs over the longer term, another significant long-term supply project may ultimately be necessary. The Company echoes concerns raised by RCDOH that securing sufficient water supply is crucial to the health of Rockland County residents as well as the area's economic development potential.²⁰ Finally, the Company notes that it will provide further details on the proposals and associated cost estimates and potential customer bill impacts in its next rate filing, which is now expected to be filed in early 2016.

THE VICKERS REPORT

The Vickers Report covers two major topics. First, it argues that customer demand in Rockland County has been flat and is likely to decline for at least the next decade. Second, the report assesses UWNY's water supply situation and customer water use patterns based on three years of the Company's data and provides a comparison of those data to national averages developed by the American Water Works Association (AWWA).

The Vickers Report asserts that the Company's performance in managing water supplies makes it an outlier in terms of those national average benchmarks. The report concludes, based on the differences between the Company's data and the AWWA averages, that a large volume of NRW water may be available to the system. It also asserts that discrepancies in the data tend to mask the true volume of water that is lost due to leakage. The Vickers Report estimates that 2.5 to 3.3 MGD in water lost to leakage may be recoverable.

²⁰ Feasibility Report at 7-5.

The Vickers Report also categorizes UWNY's customers by their usage and identifies the percentage of customers in each category that are the highest volume consumers. The report discusses conservation techniques that have been applied in other locations and suggests that the results achieved in other municipalities could be replicated in Rockland County. It also specifies which conservation measures can be taken by the Company and which require action by Rockland County governmental authorities, such as setting landscape irrigation limits and enacting local high-efficiency water standards.²¹ Using this comparative method, the Vickers Report estimates that up to 3.6 MGD of additional water savings could be achieved through "customer-oriented conservation measures."²²

In response, UWNY filed an additional document on August 4, 2015 critiquing the findings of the Vickers Report.²³ The Company contested many of the findings and assertions made in the Vickers Report and charged the consultant with various errors in interpreting UWNY's data. Ms. Vickers submitted a technical memorandum responding to these critics. We note the Company also concurred with many of Vickers' recommended approaches to conservation.²⁴

PUBLIC NOTICE AND COMMENT

By notice issued August 6, 2015 the Secretary to the Commission sought public comments on (i) the reports filed by

²¹ Vickers Report at 4-6.

²² Ibid. at ES2-3.

²³ Case 13-W-0303, supra, Report, United Water New York Inc. Independent Review, Ove Arup & Partners P.C. (filed August 4, 2015) (Arup Report).

²⁴ Arup Report at 12-15.

the Company and the Task Force; and (ii) whether UWNY should be authorized to abandon its plan to construct the Project.²⁵ The deadlines for comments and reply comments were extended in a subsequent notice to October 5 and October 19, respectively.²⁶ Numerous comments and replies were submitted.

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on August 26, 2015. The time for submission of comments pursuant to the Notice expired on October 12, 2015. Over 1,900 comments were received.

The majority of the commentators advocate for the abandonment of the desalination plant project on the ground that it is not needed. Many endorse the criticisms of UWNY and the findings made in the Vickers Report. Many repeat Vickers' assertion that demand in Rockland County has been and will continue to be flat. Many also rely on the Vickers Report to argue that much more conservation is possible than UWNY has historically achieved, thus improving the supply situation.²⁷ Finally, several commentators urge the examination of particular potential sources of supply or the use of specific conservation methodologies.

A number of parties also ask us to take note of "data discrepancies" that the Vickers Report purports to find in the Company's data. These comments focus on the reported volumes of water supply, customer consumption, and water losses summarized in Table 2-1 of the report, which puts various data sets for the years 2012, 2013, and 2014 side-by-side. The data sets include

²⁵ Case 13-W-0303, Notice Seeking Public Comment on Abandonment of the Haverstraw Project Plan (August 6, 2015), at 3.

²⁶ Case 13-W-0303, supra, Notice Extending Comment Period (issued August 17, 2015).

²⁷ Vickers Report at 4-4.

the Company's reports to the Commission, its reports to the Department of Environmental Conservation, and several compilations prepared by the Company in response to Vickers' questions. The commentators also point to analyses made in the Vickers Report that suggest the Company has significantly understated the volume of water lost to leakage and overstated the category of "apparent losses," which includes metering and data error and unauthorized consumption.

Individual comments raised other issues unrelated to the questions of the need for the Project, the timing of the need for additional supply, and the availability of alternatives. The Task Force and several of its members urge us to require the Company to fund studies and other efforts the Task Force is planning to undertake. The Town of Ramapo repeats its argument that the Company's decision to undertake the Project was not prudent. The West Branch Conservation Association asserts that Rockland County customers should not have to pay a surcharge for the Company's development costs. The Utility Intervention Unit (UIU) suggests we undertake a management audit of UWNY.

Some parties urge us to clarify the way forward. The Town of Haverstraw states that it supports construction of the Project and asks the Commission to provide guidance on how long-term supply issues will be managed. The Sierra Club, Atlantic Chapter, states that reaching a decision on the Project will allow all parties to focus on developing a sustainable system. The Company echoes this request. It continues to support Staff's earlier proposal to set a "trigger" for resuming development of the Project, but at the same time asks for clarity from the Commission one way or the other.

DISCUSSION

Demand Trends

There are distinct differences of opinion among UWNYS and the opponents of the Project about whether new long-term supply sources are needed, and when. A number of commentators assert that the need date for new supply can be extended or even pushed out indefinitely if we accept different assumptions about future supply and demand, based on the information submitted with the Vickers Report. Many commentators repeat Vickers' assertion that demand in Rockland County has been and will continue to be essentially flat for the foreseeable future.²⁸

In the November Order, the Commission approved Staff's forecast of future demand as a "reasonable conservative assessment of future demand for planning purposes."²⁹ Using that forecast, we found that new supply might be needed as early as 2020 or 2021, and that an aggregate additional 5 MGD might be needed by 2035.³⁰

The Company points out that the flat period of demand between 2009--2012 reported by Vickers reflects the national economic downturn and the loss of several commercial customers at the local level.³¹ Comments from RCDOH and the Rockland County Executive support the conclusion that demand is likely to rise. They note that annual average potable water demand in the county has been increasing since 2012. Mr. Day, the Rockland County Executive, also observes that the 2014 actual year end demand came very close to the DPS Staff projection and that the

²⁸ Vickers Report at ES-1 and 1-1.

²⁹ November Order at 35.

³⁰ Id.

³¹ Arup Report at 5-6.

estimated 2015 average exceeds the level Staff projected. In separate comments, RCDOH expresses concerns about the risk of underestimating demand, pointing out that changes in water use patterns and the pace of economic recovery could reduce the amount of time we have to develop new supplies. RCDOH further opines that demand reduction measures alone may not be sufficient to stave off the need for new sources.

The recent supply and demand data provided by UWNY in its quarterly reports also suggest that demand has been increasing rather than remaining static. On October 19, 2015 Staff submitted an update to Appendix 1 of the November Order to reflect the Company's most recent demand data. The data for the period through the end of December 2014 lands squarely on the initial point of Staff's projection line, and the subsequent data point, reflecting *actual* consumption through the end of September 2015, is above Staff's projection. While we recognize that these are only two data points over a long term planning horizon, they are the most recent actual consumption data available.

As we stated in the November Order, our over-arching responsibility to consumers requires the Commission to take a conservative planning approach. The available data suggest that Staff's demand growth projections are reasonable, and the Company's most recent filings appear to confirm them. Nothing in the Vickers Report or the comments offers any concrete reason to reject Staff's estimates of demand growth or its forecast of the expected need date for additional supply sources.

In summary, the comments do not suggest any change in the long term-outlook for Rockland County's water supplies. We therefore affirm our prior determination that new supplies may be needed in the 2020-21 timeframe, and that additional new

supply of 5 MGD may be needed by 2035. Staff's recent update to Appendix 1 of the November 2014 Order supports our conclusion.³²

Alternative Proposals

Our obligation to consumers in Rockland County requires us to ensure that the Company appropriately plans for the need we have identified and has a reliable source of water now and into the foreseeable future.³³ We took the opportunity presented a year ago to examine whether conservation and other measures might be adequate to allow UWNY to abandon the Project, the solution it put forward in 2007. The Company responded to the November Order with a three-part proposal that it believes will allow it to manage supply and demand for the next decade.³⁴ If successful, the Company's proposal will bring Rockland County safely past the 2020-21 projected need date. However, the Company explains that its currently proposed programs (i.e., conservation, leak reduction and wells) may not satisfy the currently anticipated level of demand that will exist beyond the next ten years. That is why the company is exploring additional supply options such as interconnections with neighboring water systems and increased permit authority and relate Ramapo River watershed issues.

The Company states that a combination of measures is capable of providing between 3 and 5 MGD in additional supply for Rockland County over the next ten years.³⁵ The Company's proposal examines the potential for recovering water through

³² It is possible that demand may rise at an even faster rate than Staff forecasted in 2014; if this occurs, the need date will arrive sooner than we currently project.

³³ November Order at 35-36.

³⁴ Feasibility Report at 7-5; Graziano Letter at 2.

³⁵ Feasibility Report at 5-5.

improved leak detection and infrastructure repair, the potential savings to be gained through conservation measures that the Company could implement, with this Commission's approval, and the potential for developing new wells and interconnections with other water systems.³⁶ The Company states that the costs of pursuing these measures are not yet fully developed and explains that it will provide cost estimates and schedules for implementing its program in its next rate filing, which we expect will be submitted in early 2016.

The outline of the Company's proposal has considerable support from the Task Force and many of the other commentators in this proceeding. While certain details are debated, there is a general consensus that conservation, leak detection, and the exploration of small sources of new supply are measures that should be pursued as an alternative to the Project to address demand over the next decade. We understand that some commentators may have different views about how much water savings these measures can achieve, but no one disagrees on the appropriateness of the three-pronged approach UWNY recommends.

The Commission finds that the company's three part proposal is reasonable and if pursued with alacrity will meet UWNY customer water needs over the next decade. We do not need to resolve the parties' differing views; what is important at this stage is whether the Company's estimate of what it can achieve, which is lower than what the Task Force believes UWNY and local governments can do, reasonably meets the need that we have identified. If the Company's efforts in fact produce greater savings than it currently projects, Rockland County consumers will benefit. Commentators correctly observe that greater conservation and leak reduction savings, assuming growth

³⁶ Graziano Letter at 1-2.

in demand is consistent with Staff's projection, may push the need to invest in additional supplies out further in time. Indeed, we are hopeful that the combined efforts of UWNY and Rockland County authorities will achieve this laudable goal and find a mutually supportive path to sustainability for the long term. It is also possible that the upper bounds of estimated savings will not be achieved, or that actual demand may rise faster than Staff has forecasted, thus "consuming" some or all of the savings won through conservation. To ensure that UWNY continues to plan for the potential for longer term needs beyond the next ten years, we direct UWNY to study and further explore several additional supply options, including interconnections with neighboring water systems, increased permit authority from existing well supplies and related watershed issues.

The commentators rely on the Vickers Report to argue that much more conservation is possible than UWNY has historically achieved.³⁷ The discussion of conservation successes in other localities that the Vickers Report presents does not support definitive statements about the volumes of water that can be conserved in Rockland. As we stated in the November Order, our approach to planning does not permit us to rest on the potential for water savings. Until conservation efforts are implemented in the service area, and projections can be shown to be reliable through data analysis, we do not believe reliance on possible conservation savings fulfills our statutory obligation to ensure safe and adequate water supply.³⁸ For planning purposes, we accept the Company's assessment of the potential

³⁷ Vickers Report at 4-4; Comment of Robert Kecskes (October 5, 2015) at 5.

³⁸ November Order at 33. "[W]e cannot consider the impact of ... conservation measures until we have the opportunity to monitor their effectiveness."

for conservation, which is based on the Company's experience with the measures it proposes and which comports with a cautious approach to planning.

Some commentators urge us to direct UWNKY to examine different alternative sources of supply, or contest the Company's judgment about what supply alternatives might be worth exploring. On this point, we find that the Company has provided reasonable explanations of the feasibility of the new supply alternatives it plans to pursue. The Company has laid out the many uncertainties that affect the likelihood of establishing any of the new interconnections evaluated in the Feasibility Report. The Company has neither counted on these options for any specific supply margin nor ruled any of them out; rather, the Company proposes to continue to explore them. We do not find any reason in the comments to disturb the Company's recommendations.

Nor do we find that any alleged "data discrepancies" are sufficiently serious as to call into question the Company's estimates of water produced and supplied. We accept as reasonable the Company's explanation that many of the discrepancies noted in Table 2-1 arise out of the fact that the data sets were prepared for different purposes and from different starting points. For example, the Company notes that the annual reports filed by UWNKY with the Commission identify 182.50 million gallons per year of water imports, which is provided strictly for financial reasons associated with a take-or-pay arrangement with the Letchworth facility, but does not represent the actual amount of water used under this contract. The Company then explains that similar data provided to Vickers and reported in the Company's annual reports to the Department of Environmental Conservation properly assign a value of zero to this category. Thus, Vickers' inclusion of the 182.50 MG figure

in the NRW calculations overstates the Company's production by 182.50 MG. Even with that reasonable explanation, we note that the claimed differences among the calculated percentages of NRW to total production are very small on an overall percentage basis and that each of the data sets does in fact confirm the relative magnitude of the NRW issue. In any event, we do not find the purported discrepancies to be material to the issue of whether the Company's near-term supply proposal is in the public interest.

In conclusion, we find that the Company's proposal is a reasonable approach to managing Rockland's water supply for the next ten years. If implemented with diligence, which we expect the Company to employ, the combination of measures should keep supply in balance with demand. Although program details and cost estimates for those alternatives have not been developed, the preliminary estimates in the record before us indicate that the costs to sustain demand over the next decade should be less than the remaining costs for the first two phases of the Project. In light of that determination, we direct the Company to abandon the Project, and direct the Company to submit the details of its alternative plans, including cost estimates and implementation schedules, with its upcoming rate case filing. Once abandoned, the Company should file a deferral petition requesting to transfer Project costs from Construction Work in Progress (account 107) to Miscellaneous Deferred Debits (account 186). The deferral petition should include the information identified in the Appendix to this order.

Even as the utility pursues its three-part strategy of conservation, reduction of real losses, and optimization of potential new supplies, it must continue to plan for both the near term and the long-term. Many factors influence the need date, and it is difficult to predict the timing of the need with

certainty. Additional supply sources may ultimately be necessary, depending on population and economic growth and the evolution of demand beyond the 2020 to 2025 period. Given the tight relationship between demand and supply, we require the Company to continue making quarterly filings reporting actual supply and demand, as set forth in the November Order.

We also received requests from many commentators to require the Company to fund the next phase of a study that the Task Force states it intends to undertake. We decline to take this step. The role of the Task Force is beyond the scope of the question at issue here, and is outside this Commission's jurisdiction. We understand that the Company and the Task Force are working towards a collaborative process to address additional conservation measures and we continue to support the Company and the Task Force. We note that the Company, has hired a nationally recognized consultant to study conservation opportunities and is working with key stakeholders and Department Staff to ensure meaningful input on the scope and parameters of the conservation program and facilitate coordination of efforts.³⁹ We expect this study to provide a well-documented foundation for further specific proposals on what additional measures the Company and the Commission could implement to encourage conservation, their likely benefits, and their costs. We agree with the commentators who believe Rockland County should be a leader in water resource management. To help all parties achieve this, we further expect the Company's study to identify, from among the best practices in use around the country and beyond, conservation measures that could be successfully adopted and implemented by Rockland County and its municipalities.

³⁹ UWNY Comments at 11.

We also see another area where the Company and the Task Force are firmly in agreement. Both parties recognize that local government action may be necessary to realize the full potential benefits of conservation. Some measures are beyond the Company's authority and this Commission's jurisdiction and can only be instituted by local governments acting pursuant to their own authorities. Our decision here is based on our confidence in the Company's ability to achieve at least the minimum savings it has projected. We commend the Task Force's commitment to conservation, and we agree that local government action is needed to ensure a safe and reliable supply in the future. We expect those parties to undertake concrete and verifiable steps to conserve and protect Rockland County's finite water resources.

PRUDENCE

Certain commentators, including the Town of Ramapo, the West Branch Conservation Association, Robert Dillon, and Dorice Madronero continue to ask us to find the Company's actions in proposing and developing the Project imprudent. These comments repeat claims that were made and rejected in the prior phase of this proceeding.⁴⁰ Others suggest that the recently-filed Vickers Report justifies reconsideration of the prudence issue, pointing to the report's finding that demand has been flat in recent years and to its observations concerning the potential for greater conservation.

While not specifically raised here as such, we will treat these comments as requests for rehearing under our

⁴⁰ November Order at 66. Some of the comments submitted in this proceeding claim that the charges incurred by the Company are unreasonable or that the Company's expenditures were not prudently managed. These latter issues are the subject of the related Case 13-W-0426, and we will address them there in due course.

procedural rules at 16 NYCRR Part 3.7. We note that Ramapo raised arguments on prudence issues in its request for rehearing in the surcharge matter, Case 13-W-0246. For completeness, we also consider those arguments here.⁴¹

Our procedural rules provide that a party may seek rehearing "only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination." They further state that "(a) petition for rehearing shall separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing." By this standard, the comments filed fail to justify a re-examination of the Company's actions. None of them identifies any specific error of law or fact in the November Order, or points out any specific change in circumstance that would support rehearing.

As we noted in the November Order, UWNY was pursuing the additional long-term supply in furtherance of Commission orders; while changing circumstances (recession induced reduction in need and the formation of the Task Force) led us to explore alternatives, they do not justify a prudence proceeding.⁴² The general assertion that demand will be flat absent new programs is not consistent with the November Order and does not suggest any factual error. Nor does an opinion about the future possibility of greater conservation savings meet the threshold for requiring UWNY to demonstrate that the utility's judgment at the time it made its planning decisions

⁴¹ Ramapo's rehearing request includes challenges related to the surcharge, which are not relevant to this case.

⁴² November Order at 65.

was imprudent.⁴³ We therefore conclude that the comments do not justify reconsidering our prior finding of prudence.

In the surcharge case, Ramapo claims that the Company was imprudent in selecting a desalination plant to address its long-term water supply needs and that the Commission made an error of fact when it approved this technology choice.⁴⁴ Ramapo also alleges that the Company acted imprudently by failing to review the need for the project when the results of a U.S. Geological Survey report suggested that the aquifers in UWNY's service territory were recharging faster than previously thought.⁴⁵ In the same vein, Ramapo asserts a decline in demand between 2005 and 2010 amounts to a new circumstance justifying rehearing.

We find that the grounds Ramapo offers as a basis for rehearing are merely restatements of the arguments the parties raised earlier in this case and that we rejected in the November Order. The attempt to identify an error of fact fails because it does not actually specify a factual mistake; the rehearing petition simply restates Ramapo's disagreement with the Company's decision to develop the Project. Accordingly, we deny Ramapo's request for rehearing.

CONCLUSION

We find that the alternative water supply management measures proposed by UWNY provide reasonable assurance that the Company can meet projected demand for the next decade. In light of that finding, we determine that the Project is no longer

⁴³ Ibid. at 60, citing Matter of Fuel Gas Distrib. Corp. v. Public Service Commission of N.Y., 16 N.Y.3d, 368-369 (N.Y. 2011).

⁴⁴ Ramapo Petition, pp. 4-5.

⁴⁵ Petition at 9.

needed, and the Commission will view any pursuit of the Project beyond the date of this Order as an imprudent act by the Company. Consequently, we expect the Company to abandon its plan to construct the Project. We further direct the Company to (i) continue planning for short and long-term lost water mitigation measures, conservation, and other incremental supply additions; and (ii) continue filing quarterly reports of supply and demand, as required by the November Order. We also require the Company to provide details on the costs and implementation schedules for the measures it has proposed, and proposals for conservation-oriented rate structures, in its upcoming rate filing.

The Commission orders:

1. United Water New York, Inc. is directed to confirm abandonment of its plan to construct the desalination plant in the Town of Haverstraw by letter to the Secretary within five business days from the date of this Order.

2. United Water New York, Inc. shall (i) continue planning for short and long-term lost water mitigation measures, conservation, and other incremental supply additions; and (ii) continue filing quarterly reports of supply and demand, as required by the November Order; and (iii) provide details on the costs and implementation schedules for the measures it has proposed, and proposals for conservation-oriented rate structures, in its upcoming rate filing.

3. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

Any deferral petition filed upon the abandonment of the Project must provide the following:

- 1) The amount the company proposes to defer, broken down between costs approved in the November 2014 Surcharge Order and costs that have not yet been reviewed and/or approved.
- 2) Detailed support for the costs that have not been previously approved by the Commission.
- 3) An updated AFUDC calculation through December 31, 2015.
- 4) An estimate of any remaining future costs to abandon the Project, if the Company expects any.
- 5) A proposed amortization period to recover the Project costs.
- 6) An estimate of the tax benefit of writing-off the abandoned Project immediately for tax purposes and recovery of the costs from the customers over time. Include all supporting calculations.