

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway, 14th Floor
Albany, New York 12233-1010

In the Matter of a Petition to Fix the Water Rates Charged
to Upstate Communities for the Rate Year July 1, 2004 by
the New York City Water Board, Pursuant to Section 24-360
of the Administrative Code of the City of New York, Article
15 of the Environmental Conservation Law, and Title 6 of
the Official Compilation of Codes, Rules and Regulations of
the State of New York Part 603,

-by-

Village of Scarsdale,
Westchester Joint Water Works,
City of White Plains,
United Water New Rochelle, and
United Water Westchester
(as successor to Aquarion Water Company),

Petitioners.

OHMS Case No. 2005J490

DECISION OF THE COMMISSIONER

June 3, 2011

DECISION OF THE COMMISSIONER

Effective July 1, 2004, the New York City Water Board (the Water Board) changed the entitlement water rate (water rate) for upstate communities. In a petition dated July 20, 2004, the above-referenced petitioners (Upstate Communities) jointly filed a request with the Commissioner of Environmental Conservation for a hearing to challenge the upstate water rate implemented by the Water Board on July 1, 2004 (Fiscal Year [FY] 2005).

As set forth in the attached summary report of Administrative Law Judge (ALJ) Daniel P. O'Connell, under cover of a letter dated May 27, 2011, counsel for Upstate Communities filed a stipulation with the ALJ. The stipulation would resolve the matters raised in the July 20, 2004 petition, as well those raised in petitions that were subsequently filed (see Summary Report, at 2, footnote 1 [listing the subsequently filed petitions]). In addition, the stipulation provides a methodology for calculating the upstate water rate through July 1, 2015 (FY 2016).

The stipulation was signed on May 27, 2011 by Joel Dichter, Esq., on behalf of Upstate Communities, and Gail Rubin, Esq., New York City Assistant Corporation Counsel, on behalf of the Water Board.

In an email to the parties dated May 27, 2011, the ALJ inquired of Scott Crisafulli, Esq., counsel for staff of the New York State Department of Environmental Conservation (Department) whether Department staff wanted to comment on the stipulation. In an email dated May 31, 2011, staff advised that it had no comments.

Upstate Communities and the Water Board requested that I issue a final determination directing implementation of the stipulation. The ALJ, in his summary report, recommends that I approve the stipulation. Based on my review of the stipulation the ALJ's summary report, and the underlying record, I hereby

direct implementation of the stipulation. In this regard, I shall also execute the "So Ordered" clause of the stipulation that was filed with ALJ O'Connell.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____ /s/
Joseph J. Martens
Commissioner

Dated: Albany, New York
June 3, 2011

Attachments:

Executed Stipulation
Service List dated December 3, 2010

SERVICE LIST
December 3, 2010

To: Joel R. Dichter, Esq.
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NEW YORK STATE:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Petition to fix the water rates charged to upstate communities for the rate year July 1, 2004 by the New York City Water Board, pursuant to Section 24-360 of the Administrative Code of the City of New York, Environmental Conservation Law Article 15, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York Part 603

Summary Report

by

Village of Scarsdale,
Westchester Joint Water Works,
City of White Plains,
United Water New Rochelle, and
United Water Westchester
(as successor to Aquarion Water
Company),

OHMS Case No.
2005J490

Petitioners.

Proceedings

Effective July 1, 2004, the New York City Water Board (the Board) changed the upstate water rate to \$591.21 per million gallons. In a petition dated July 20, 2004, the above referenced petitioners (Upstate Communities) jointly filed a request with the Commissioner of Environmental Conservation for a hearing to challenge the upstate water rate implemented by the Board on July 1, 2004 (Fiscal Year [FY] 2005).

Issues for adjudication were identified in a ruling dated December 8, 2008. Subsequently, then Acting Commissioner Peter M. Iwanowicz determined the issues for adjudication in an Interim Decision dated December 1, 2010.

During a telephone conference call held on April 21, 2011, the parties advised me that the Board and Upstate Communities were developing a stipulation that would resolve the July 20,

2004 petition concerning the upstate water rate effective July 1, 2004, as well as other pending petitions.¹

With a cover letter dated May 27, 2011, counsel for the Upstate Communities, Joel Dichter, Esq., and Kathy Lane, Esq. (Dichter Law, LLC, New York) filed a Stipulation Adopted by Order of Commissioner. Mr. Dichter signed the stipulation on behalf of Upstate Communities, and Gail Rubin, Esq., Assistant Corporation Counsel, signed the stipulation on behalf of the Board.

In an email to the parties dated May 27, 2011, I asked Scott Crisafulli, Esq., counsel for Staff of the Department of Environmental Conservation (Department staff) whether Department staff wanted to comment about the stipulation. In an email dated May 31, 2011, Mr. Crisafulli advised that Department staff had no comments about the stipulation.

The stipulation would resolve not only the July 20, 2004 petition, but those filed subsequently (see note 1 below). Furthermore, the stipulation provides a methodology for calculating the upstate water rate through July 1, 2015 (FY 2016).

The parties request that the Commissioner adopt the stipulation and order its implementation before June 8, 2011. I recommend the same.

/s/

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
June 1, 2011

To: Service List dated December 3, 2010

¹ Upstate Communities also filed petitions dated: (1) October 28, 2005 regarding the rate effective July 1, 2005 (Fiscal Year [FY] 2006); (2) September 11, 2006 regarding the rate effective July 1, 2006 (FY 2007); (3) October 10, 2007 regarding the rate effective July 1, 2007 (FY 2008); and (4) October 21, 2008 regarding the rate effective July 1, 2008 (FY 2009). Administrative hearings concerning these petitions have been held in abeyance at the parties' request pending resolution of the July 20, 2004 petition.