

Based on an order signed by the Commissioner of the New York State Department of Environmental Conservation dated June 3, 2011, ordering and directing the implementation of a stipulation, attached hereto and signed by the Board and the Petitioners Village of Scarsdale, Westchester Joint Water Works, City of White Plains, United Water New Rochelle, and United Water Westchester, the Board agrees to make a one-time adjustment in the form of a \$10 million reduction to the cost of water supply service as reflected in the entitlement water rate to be established for the year beginning July 1, 2011 (the FY2012 rate). The table below presents the calculation of the proposed FY2012 regulated rate and upstate cost of service incorporating the Stipulation credit to the table on page 49 of the Report of May 9, 2011, entitled "Summary of the Calculation of the Proposed 2012 Rate".

Calculation of the Proposed FY 2012 Rate for Water Supply Service

13	Total Costs Related to Facilities North of the City	\$	524,826,989
14	System Usage	MG	406,298
15	Unit Rate to Recover the Total Costs (line 13 divided by 14)	\$/MG	1,291.73
16	Unit Rate Charged	\$	
17	Revenue Raised (line 14 times 16)	\$	
18	Difference: Cost of Service Less Revenue (line 13 minus 17)	\$	
19	Cost Reconciliation for Prior Years	\$	(21,647,720)
20	Stipulation Credit	\$	(10,000,000)
21	Net Total Costs for Facilities North of the City (line 13+19+20) Including Stipulation Credit	\$	493,179,269
22	Difference: Net Total Costs Less Revenue (line 17 minus 21)	\$	
23	Unit Rate Net of the Reconciliation (dividing the sum of line 13 and 19 by line 14) Excluding Stipulation Credit	\$	1,238.45
24	Unit Rate Net of the Reconciliation (line 21 divided by 14) Including Stipulation Credit	\$	1,213.84
25	Upstate New York Usage	MG	40,848
26	Total Upstate Cost (line 24 x 25)	\$	49,583,320

Summary of the Calculation of the Proposed 2012 Rate

Including the effects of the \$10 million Stipulation credit, the resulting unit rate, shown on line 24, is \$1,213.84 per MG in 2012. The estimated upstate cost for entitlement water, based on the unit rate in line 24 and the estimated upstate usage in line 25, is \$49,583,320.

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: 
Joseph J. Martens
Commissioner

Dated: Albany, New York
June 3, 2011

Attachments:

Executed Stipulation
Service List dated December 3, 2010

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Petition to Fix the Water Rate Charged to Upstate Communities for fiscal year 2005 (water rate effective 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, and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 603 by

STIPULATION ADOPTED BY ORDER OF COMMISSIONER

OHMS Case No.: 2005J490

**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.

THIS STIPULATION (hereinafter referred to as the "Stipulation") is made and entered into as of this 27th day of May, 2011, by and between the Petitioners, the 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) (collectively "Petitioners") and the New York City Water Board (the "Board").

WHEREAS, the Water Supply Act of 1905, as amended and now codified in section 24-360 of the Administrative Code of the City of New York, authorizes certain communities located north of the City ("Upstate Communities") to take and receive a certain amount of water from the City of New York's ("City") water system ("entitlement water");

WHEREAS, Petitioners filed petitions with, or appeared before, the New York State Department of Environmental Conservation ("DEC") challenging water supply rates

("entitlement rates") charged to Upstate Communities and established by the Board effective July 1, 1996, July 1, 1997, July 1, 1998, July 1, 1999, July 1, 2004, July 1, 2005, July 1, 2006, July 1, 2007, July 1, 2008;

WHEREAS, Administrative Law Judge ("ALJ") Daniel P. O'Connell, in an Interim Decision dated January 13, 2006 ("Interim Decision") and affirmed by the DEC Acting Commissioner in a Decision dated February 14, 2011, dismissed petitions challenging the entitlement rates that the Board implemented on July 1, 1996, July 1, 1997, July 1, 1998, and July 1, 1999, ruled that Petitioners were barred from the filing of petitions challenging the entitlement rates that the Board implemented on July 1, 2000, July 1, 2001, July 1, 2002 and July 1, 2003, and ruled that the earliest valid petition pending concerned the water rate implemented on July 1, 2004;

WHEREAS, a Notice of Public Hearing dated September 12, 2008 was published and mailed in accordance with 6 NYCRR Part 624, with an address correction published and mailed to each Upstate Community, of a pre-adjudicatory hearing issues conference relating to the petition challenging the entitlement rate the Board implemented on July 1, 2004 in this proceeding to be held on October 23, 2008;

WHEREAS, no requests for party status were received before or at the issues conference held on October 23, 2008;

WHEREAS, the ALJ issued an Issues Ruling dated December 8, 2008, which the DEC Acting Commissioner affirmed as modified by Interim Decision dated December 1, 2010 and remanded the entitlement water rate effective July 1, 2004 to the ALJ to schedule a hearing;

WHEREAS, subsequent to the Issues Ruling and the Interim Decision, and after the parties stipulated to the use of actual consumption numbers for the FY2005 rate rather than

projected consumption numbers, the issues remaining to be adjudicated were as follows: 1) Does the Board's calculation of debt service on Authority bonds result in a fair and reasonable rate for fiscal year 2005? (Interim Decision at 4); and 2) the extent to which monies received from the payment of overdue water accounts or from the satisfaction of liens relating to overdue water accounts are a component in the calculation of the water rate; whether "bad debt" should be considered as an "actual cost" for purposes of the regulations establishing rate calculation; whether an improved collection rate relative to overdue water accounts and liens would result in any lowering of the rate charged to the Upstate Communities; whether the Board would use any such monies received as a substitute for long term debt financing; and whether this would result in a lowering of the rate charged. (Interim Decision at 10).

WHEREAS, the Petitioners and the Board as the parties to this proceeding (the "Parties") now seek to resolve amicably any and all disputes concerning the entitlement water rates established by the Board with dates effective July 1, 2004 to July 1, 2009 ("fiscal years" (FY) 2005 to 2010), recognizing and agreeing to the impact of such resolution as specified below on future rates, subject to entry of an order by the DEC Commissioner adopting and ordering the terms of this Stipulation;

WHEREAS, the Petitioners and the Board understand, recognize, intend and accept that the adoption and ordering of the terms of this Stipulation by the DEC Commissioner will benefit and bind Upstate Communities, including Petitioners, and the Board;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

1. The Board will make a one-time adjustment in the form of a \$10 million (TEN MILLION DOLLARS) reduction to the upstate cost of service as reflected in the Total Cost Related to Facilities North of the City for the entitlement water rate to be established

effective July 1, 2011 (FY 2012 rate); provided that this Stipulation is adopted without change and ordered by the DEC Commissioner on or prior to June 8, 2011, with notice provided of such order to counsel for the Board on or prior to June 8, 2011. In the event that the Stipulation is adopted without change and ordered by the DEC Commissioner, but notice is provided after such date, the one-time adjustment to the total upstate cost of service will be made for the entitlement water rate to be established effective July 1, 2012 ("FY2013 rate"). If the DEC Commissioner declines to order the Stipulation, or amends or alters any material term, or if all or part of the Stipulation is reversed or vacated by any court, then the Stipulation will be void, and of no force and effect.

2. All entitlement water rates established by the Board effective July 1 for all years prior to and including 2009 (in other words, FY2010 and earlier) are accepted, final and not subject to any further challenge or appeal. All cost and consumption data underlying the entitlement water rates established by the Board effective July 1 for all years prior to and including 2009 (FY2010 and earlier) are accepted, final and not subject to any further challenge or appeal. For clarity, it is specifically agreed that the "true-ups" or reconciliations applied in the FY2012 rate report attributable to FY2010, the FY2011 rate report attributable to FY2009, and the FY2010 rate report attributable to FY2008, are accepted, final, and not subject to any further challenge or appeal.

3. For entitlement water rates established effective July 1 from 2011 to 2015 (in other words, FY2012-FY2016), the Board will calculate projected consumption for the rate year in question by using a ten-year regression. For entitlement water rates set after July 1, 2015 (in other words, after FY2016), the Board will be free to reconsider the ten-year regression, and Upstate Communities will be free to challenge the Board's decision. It is agreed that for rates

established effective July 1, 2010 (FY2011), the Board calculated projected consumption for the rate year in question by using a ten-year regression, and that such calculation of projected consumption is accepted, final and not subject to challenge.

4. For entitlement water rates established effective July 1, from 2010 to 2015 (FY2011-FY2016), the Board will perform a "true-up" or cost reconciliation that will:

- a. true-up or reconcile actual costs and recovered costs, defined as the unit rate charged by the Board in a particular year times the actual consumption in that year, in the same manner as has been done since the FY2010 rate year for FY2008 costs. This true-up or reconciliation will result in a credit or additional charge to Upstate Communities, as the case may be, and will be applied to the cost of service for the upcoming rate year when actual data becomes available, usually two years after the projected rate year concludes.
- b. true-up or reconcile actual consumption, in the same manner as has been done since the FY2010 rate year for FY2008 consumption, and as further described in paragraph 4(a).

For entitlement water rates set after FY2016, the Board will be free to reconsider the true-up or reconciliation, and Upstate Communities will be free to challenge the Board's decision.

5. For entitlement water rates established for years after FY2010, the methodology adopted by the Board for calculating debt service is accepted, final and not subject to challenge or appeal, and any such challenge or appeal to such methodology is waived; provided that the methodology used by the Board to set entitlement water rates for years after FY2010 is the same as that used in setting the entitlement water rate for FY2005, which includes,

as identified in the FY2005 rate report (a) the "alternative methodology," taking the total net debt service payable for the City's water and wastewater system in each year times the percentage attributable to the water supply portion of the capital improvements that have been financed with bond proceeds; (b) the costs of cash-financed construction and (c) the costs associated with the defeasance and refunding of debt, since the net debt service under the "alternative methodology" described in (a) takes into account the impacts of defeasance and refunding. If the Board changes the methodology at any time in the future, Upstate Communities will be free to challenge the Board's decision with respect to the year in which the methodology is changed, and going forward.

6. In addition to acceptance of the methodology as described in paragraph 5, for entitlement water rates established for years after FY2010, the cost data and proof of costs underlying the Board's calculation of debt service for all debt issued prior to and through FY2010, including any offsets, are accepted, final and not subject to challenge or appeal, and any such challenge or appeal to debt service costs for all debt issued prior to and through FY2010 is waived, including (a) the calculation and proof of the percentage of debt attributable to or allocated to the water supply or upstate portion of the capital improvements that have been financed with the proceeds of bonds; (b) the calculation and proof of the total principal amount of bond proceeds and upstate principal amount of bond proceeds, and (c) the proceeds of bonds and resulting debt service attributable to the refunding or defeasance of debt that was originally issued prior to or through FY2010. Nothing herein shall in any way limit the ability of the Petitioners to review the costs, proof of costs and calculation of costs of debt service for debt issued subsequent to FY2010.

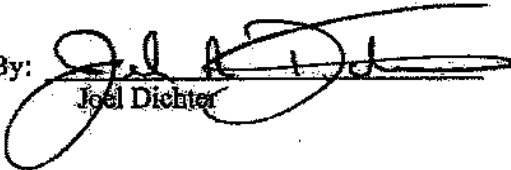
IN WITNESS WHEREOF, counsel to the Parties have duly executed this

Stipulation on the date first above written.

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
*Attorney for the New York City Water
Board*
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By: 
Gail Rubin
Assistant Corporation Counsel

DICHTER LAW LLC
Attorney for Petitioners
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(212) 593-4202

By: 
Joel Dichter

SO ORDERED.


COMMISSIONER

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.



Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
June / , 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.