

NEW YORK STATE: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Petition To Fix the
Water Rate Charged to Upstate Communities
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

Issues Ruling

OHMS Case No.:
2005J490

Village of Scarsdale,
Westchester Joint Water Works,
City of White Plains,
United Water New Rochelle, and
Aquarion Water Company,

PETITIONERS.

December 8, 2008

Proceedings

The Water Supply Act of 1905 and later amendments, now codified as Section 24-360 of the Administrative Code of the City of New York (the Act), authorizes upstate communities to take water from the New York City water supply system. For this water, the New York City Water Board (the Board) may charge a rate based on the actual total cost of the water to the City less all costs associated with distributing the water within the City's limits. If there is a dispute about whether the upstate water rate is fair and reasonable, the Act and New York State Environmental Conservation Law (ECL) § 15-0903 authorizes the Commissioner of the Department of Environmental Conservation to conduct a hearing to determine the rate (also see Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York [6 NYCRR] Part 603 [Applications for Fixation of Water Rates]).

Effective July 1, 2004, the Board changed the upstate water rate to \$591.21 per million gallons. In a petition dated July 20, 2004, a group of Upstate Communities filed a joint petition with the Commissioner for a hearing to challenge the upstate water rate implemented by the Board on July 1, 2004. Subsequently, Upstate Communities provided additional information with a cover letter dated November 22, 2004. The Upstate Communities include the Village of Scarsdale, Westchester Joint Water Works, the City of White Plains, United Water New Rochelle, and the Aquarian Water Company. During the October 23, 2008 issues conference (see below), counsel for the Upstate

Communities stated that the non-municipal water companies serve the Villages of Mamaroneck and Larchmount, among others (Issues Conference Tr. p. 6).

The July 20, 2004 petition was held in abeyance pending settlement discussions. In a letter dated May 21, 2008, Upstate Communities advised that a settlement could not be reached, and requested that the hearing be scheduled.

The Notice of Public Hearing dated September 12, 2008 appeared in the Department's *Environmental Notice Bulletin (ENB)* on September 17, 2008. The Office of Hearings and Mediation Services mailed copies of the September 12, 2008 Notice to all upstate water users on September 17, 2008. On September 18, 2008, counsel for Upstate Communities notified each upstate user of a correction concerning the location of the hearing. Upstate Communities published the September 12, 2008 Notice in the *Journal News* on September 25, 2008, and provided me with an affidavit of publication dated October 2, 2008. A correction about the hearing location appeared in the *ENB* on October 1, 2008.

As scheduled in the September 12, 2008 Notice, I convened an issues conference at the Scarsdale Village Hall at 11:00 a.m. on October 23, 2008 to identify the issues related to Upstate Communities' July 20, 2004 petition. The Notice set October 10, 2008 as the date for receipt of petitions for full party status (see 6 NYCRR 624.5[b]). No petitions for party status were received. Therefore, the parties to the issues conference and the adjudicatory hearing are limited to Upstate Communities, the Board, and Department staff.

Kathy Lane, Esq. from Newman/Dichter (New York, New York), appeared on behalf of Upstate Communities. Gail Rubin, Esq., Chief, Affirmative Litigation and Elaine Chen, Esq. from the City of New York, Law Department represented the Board. Scott Crisafulli, Esq., Chief, Bureau of Enforcement and Compliance Assurance represented Department staff.

The record of the October 23, 2008 issues conference closed upon receipt of the stenographic transcript on November 7, 2008.

Proposed Issues for Adjudication

On behalf of the Board, Black & Veatch New York, LLP, prepared a *Report on the Cost of Supplying Water to Upstate Customers for the 2005 Rate Year*, dated May 2004 (B&V May 2004

Report). The B&V May 2004 Report identifies and discusses the costs of supplying water to upstate customers, and concludes that a unit rate for fiscal year 2005 (July 1, 2004-June 30, 2005) of \$591.21 per million gallons is necessary to recover the anticipated costs of providing water to the upstate users.

Upstate Communities retained Phillip S. Teumim, LLC, who prepared an *Analysis of New York City Water Board Rates to the Upstate Communities for the 2005 Rate Year*, Volume I and *Appendices*, Volume II, dated September 2006 (Teumim September 2006 Analysis). Based on his analysis, Mr. Teumim recommended adjusting the rate to \$536.66 per million gallons.

Subsequently, the Board's consultant prepared a series of reports in response to the Teumim September 2006 Analysis. The first is entitled, *Rebuttal Report Prepared in Response to the Teumim Analysis of New York City Water Board Rates to the Upstate Communities for the 2005 Rate Year and in Further Support of the New York City Water Board's Fiscal Year 2005 Rate*, Volume I and *Exhibits*, Volume II by Edward J. Markus from the Amawalk Consulting Group, LLC, and dated December 2006 (Amawalk December 2006 Report).

In addition, the Board had two supplemental reports prepared. They are entitled, *New York City Water Board's Supplemental Report on Upstate Consultant's Fixed Asset Ratio in Support of Fiscal Year 2005 Rate* (Amawalk November 2007 Fixed Asset Ratio), and *New York City Water Board's Supplemental Report on Hydropower Revenues in Support of Fiscal Year 2005 Rate*, (Amawalk November 2007 Hydropower Revenues). Both supplemental reports were prepared by Edward J. Markus from the Amawalk Consulting Group, LLC, and are dated November 2007.

The Teumim September 2006 Analysis recommends four adjustments to the Board's rate calculation. These are: (1) estimating consumption; (2) debt service costs; (3) revenues from hydroelectric generating facilities; and (4) excessive debt and debt service expenses associated with the City's high level of bad debts. Upstate Communities are also concerned about the quality of information that the Board provided during the discovery process. The recommendations in the Teumim September 2006 Analysis served as the basis for the discussion at the October 23, 2008 issues conference.

I. Stipulated Issues

During the issues conference, the parties stipulated to the issues concerning consumption and debt service. The parties agreed to frame the consumption issue as follows:

Did the Board's regression analysis forecasting consumption for fiscal year 2005 result in a fair and reasonable rate? What type of regression analysis, if any, should be used to forecast consumption for the rate year effective July 1, 2004, or should the Board use the latest actual consumption data available at the time of the report? When actual consumption data for that rate year becomes available should consumption data be "trued-up" in a following report adding a charge or credit depending upon what the data show? (Tr. pp. 65-66.)

The concept of "truing-up" consumption as well as costs was discussed during the issues conference (Tr. pp. 52-58). Basically, truing-up would result in substituting the actual data related to consumption or costs, to the extent that they are now available, for the estimated or anticipated consumption and costs initially relied upon by the Board to calculate the July 1, 2004 upstate water rate. At the issues conference, the Board did not provide a comprehensive list of the cost categories that it would like to true-up, but reserved the right to reconsider all cost categories (Tr. pp. 52-54). In its October 30, 2008 letter (p. 1), the Board states that a "true-up of all costs necessarily follows as an issue for adjudication," if consumption is trued-up. Given the number of cost categories associated with the upstate water rate calculation, I stated at the issues conference that the Board would need to identify the costs it would like to true-up so that the scope of the hearing is well defined and clearly understood by the parties, the Commissioner and me (Tr. p. 58).

Therefore, before the hearing can continue, the Board must identify: (1) whether actual consumption data for FY 2005 are available, and (2) what cost categories related to the July 1, 2004 upstate water rate should be trued-up. If actual consumption data for FY 2005 are available, the Board shall disclose the data within 40 days from receipt of this issues ruling. In addition, the Board shall identify, within the same period, the cost categories that it would like to true-up.

With respect to debt service, the parties agreed to frame the issue as follows:

Does the Board's calculation on debt service on Authority bonds result in a fair and reasonable rate for fiscal year 2005? (Tr. pp. 66-67).

The Authority bonds referred to in the stipulated issue relate to the financial instruments issued by the New York City Municipal Water Finance Authority.

II. Non-Stipulated Issues

At the conclusion of the October 23, 2008 issues conference, the parties agreed to submit proposed language to frame the remaining issues. On November 3, 2008, I received separate letters both dated October 30, 2008 from the Board and Upstate Communities. Upstate Communities assert that the scope of the hearing should include all proposed issues because a more inclusive hearing would be perceived as being fundamentally fair. In addition, Upstate Communities argue there would be not prejudice or other harm by including all proposed issues. Department staff did not file any proposed language with respect to the remaining issues.

A. Revenues from Hydroelectric Generating Facilities

According to the Teumim September 2006 Analysis (pp. 9-10), there are eight hydroelectric generating turbines located in the system's water tunnels that are operated by third parties. The New York Power Authority (NYPA) operates two facilities. Since November 1982, water from the Ashokan Reservoir has been used to power two turbines to produce a total of 3,400 kilowatts (kW). Near the Kensico Reservoir, water has been used to power three turbines to produce a total of 2,000 kW. The Kensico hydroelectric generating facility commenced operations in July 1983 (Teumim September 2006 Analysis, pp. 9-10.)

Central Hudson Gas and Electric Company, Inc. constructed a hydroelectric generating facility in December 1953 that is located between the Neversink and Roundout Reservoirs. The single turbine generates 22,000 kW. (Teumim September 2006 Analysis, pp. 9, 11.)

The Grahamsville hydroelectric generating facility began operations in December 1955, and uses water from the East Delaware Tunnel, which connects the Pepacton and the Roundout

Reservoirs. The generating capacity of the turbine at the Grahamsville facility is 16,000 kW. Rockland Light and Power Company originally constructed the Grahamsville facility, and it is currently owned by Mirant Corporation. (Teumim September 2006 Analysis, pp. 9,11.)

The Brascan hydroelectric generating facility commenced operations in December 1988, and uses water from the West Delaware Tunnel, which connects the Cannonsville and the Roundout Reservoirs. The generating capacity of the turbine at the Brascan facility is 7,600 kW. (Teumim September 2006 Analysis, pp. 9, 11.)

The Board explains that the utilities constructed the hydroelectric generating facilities on top of the water system's tunnels, and that each facility has an annual allotment of free water to use for generating electricity. When the allotted volume is exceeded, the Board charges the facility operator for the excess water usage. The revenue that the Board collects from the facility operator for the excess water usage is reflected in the upstate water rate calculation as part of the miscellaneous revenue category. (Amawalk December 2006 Report, p. 3.)¹

With respect to the NYPA facilities, Upstate Communities contend that the Board is further compensated by receiving electricity from NYPA at a reduced rate (Teumim September 2006 Analysis, p. 10). For the hydroelectric generating facilities in the Delaware River Basin, these facilities were built and are operated at the owners' expense without any costs incurred by the Board (Teumim September 2006 Analysis, p. 11).

The Board asserts (Amawalk December 2006 Report, p. 7), however, that the hydroelectric generating facilities at Ashokan and Kensico are a small part of NYPA's portfolio, and a relatively recent investment (*i.e.*, circa 1982-1983). The Board

¹ The second attachment to Amawalk November 2007 Hydropower Revenues states that the total generating capacity of the hydroelectric facilities is 36,646 kW. According to the Teumim September 2006 Analysis (p. 9), the total generating capacity is 51,000 kW. The proposed issue for adjudication relevant to this proceeding, however, is not the total generating capacity, but the total revenue realized from these hydroelectric generating facilities, and whether the revenue should be incorporated into the upstate water rate calculation.

asserts further that Upstate Communities and the City already share the benefit realized from the low-cost electric power generated at these two NYPA facilities. Electric power from the Ashokan and Kensico facilities is distributed among 115 South Eastern New York (SENY) governmental entities, which include the Cities of New York, White Plains, and Yonkers, the Village of Scarsdale, as well as the Westchester Joint Waterworks. The City's power allocation is further divided among 11 NYPA customers such as the Metropolitan Transportation Authority, the Port Authority of New York and New Jersey, and the Jacob Javits Center. In Westchester County, there are 104 government customers who benefit from NYPA's hydroelectric facilities. (Amawalk November 2007 Hydropower Revenues, p. 2.)

With respect to the non-NYPA hydroelectric generating facilities, the Board notes that the operators bear the costs of operating and maintaining each facility, and that these costs include annual real estate taxes as well as routine capital improvements. The operators of the hydroelectric generating facilities are also required to pay the Board for using excess water. (Amawalk December 2006 Report, p. 4.)

Based on the Teumim September 2006 Analysis (pp. 12-13), Upstate Communities recommend that for FY 2005 upstate water users should have the value (up to 100% depending on the individual hydroelectric generating facility) of the outputs "imputed" into the water rate because the owners of the facilities have been compensated for their investments. To support this recommendation, Upstate Communities refer to the New York Independent System Operator (NYISO) Report dated December 7, 2005, which notes that the value of electricity generated in the Hudson Valley was \$65 per megawatt hour during 2004-2005. To calculate the proposed adjustment to the upstate water rate for FY 2005, Upstate Communities used an estimate of \$60 per megawatt hour. As a result, Upstate Communities recommend that miscellaneous revenues would increase from \$2,406,302 to \$9,906,880. Based on this revenue increase, the revised total cost of water supply would decrease by \$7,500,578.

The Board objects to the proposed adjustment to miscellaneous revenues, and argues as follows. First, there are no factual issues for adjudication concerning the actual costs and revenues associated with the hydroelectric generating facilities. The Board observes that in prior years, its consultant identified the revenues from the hydroelectric generating facilities and incorporated them into the miscellaneous revenue category, which offsets the total cost of

water supply. Second, the Board notes that Upstate Communities characterize the basis for the proposed adjustment as "imputed costs," which are not "actual costs." Referring to the 1905 Water Supply Act, the Board asserts that only actual costs may be considered in determining the upstate water rate.

By letter dated October 30, 2008 (p. 1), Upstate Communities propose to frame the issue concerning revenues realized from hydroelectric generating facilities as follows:

As the upstate communities share in the cost of the water supply system, should the City be required to credit upstate customers with imputed revenues or benefits that the City, but not the Upstate Customers, receives from contracts relating to use of the water supply system to produce hydroelectric power?

In its October 30, 2008 letter, the Board reiterates its objection to the proposed issue. Nevertheless, the Board offers the following language (p. 2) in the event that I find it appropriate to adjudicate the proposed issue:

Does crediting upstate customers only with actual revenues received by the City pursuant to commercial relationships involving the production of electricity result in a fair and reasonable rate or should the Water Board be required to credit upstate customers with hypothetical, "imputed" revenues that the City did not receive?

If an issue related to revenues from hydroelectric generating facility is joined, the Board argues there would also be a secondary issue for adjudication related to whether the Board is obliged to credit such revenues as an offset to the total cost of water supply.

Ruling: The miscellaneous revenues relied upon by the Board to calculate the FY 2005 upstate water rate are presented in the B&V May 2004 Report in Table 7 (p. 73). With respect to the hydroelectric generating facilities, the projected revenue for the rate calculation is the average revenue collected from FY 1999 through 2003. For this period, revenue from the hydroelectric generating facilities averaged \$1,267,111.

Pursuant to the Act, the upstate water rate must be based on the actual total cost of the water to the City less all costs associated with distributing the water within the City's limits.

Imputed revenues related to the hydroelectric generating facilities are not actual costs. Therefore, the issue proposed by Upstate Communities to adjust the miscellaneous revenues related to the hydroelectric generating facility will not be an issue for adjudication.

Because the imputed revenues from the hydroelectric generating facility will not be considered further, the question of whether the Board is obliged, in the first instance, to credit such revenues as an offset to the total cost of water supply becomes moot.

With respect to the upstate water rate effective July 1, 2004, no further adjustments will be made to the miscellaneous revenues related to the hydroelectric generating facilities as presented in the B&V May 2004 Report.

B. Excessive Debt and Debt Service Expense associated with the City's high level of Bad Debts

Upstate Communities argue that utilities should collect a reasonable amount of revenue annually, but recognize that all potential revenues will not be collected because some customers either are unable to pay or refuse to pay. Consequently, utilities will write-off a portion of the uncollectibles on account.

With respect to in-city water customers, Upstate Communities contend there was a high ratio of default payments to revenues collected from 1995 to 2005. During the October 23, 2008 issues conference, this proposed issue was referred to as "bad debts" or the "uncollectibles" (Tr. p. 11). Based on the Board's financial statements, the percentage of default payments compared to revenues collected during this period ranged from 5.0% to 23.8%, and averaged 8.6%. In other words, the Board had an average collection rate of 91.4% during this period. In contrast, Upstate Communities argue that ConEdison and KeySpan, the regional electric and natural gas utilities, collected about 99% of their revenues during this same period. Upstate Communities argue that if the Board had collected 99% of its revenues from 1995 to 2005, the Board would have collected an additional \$173 million. (Teumim September 2006 Analysis, pp. 13-15, 17 and Fig. 3.)

Referring to the Board's June 30, 2005 balance sheet, which shows about \$14 billion of long-term debt, Upstate Communities offer the following contention. If the Board had collected 98%

of its revenues, the Board would have reduced its long-term debt by about \$1.1 billion from the period 1995 to 2005. Upstate Communities contend further that the ratio of potential savings (\$1.1 billion) to long-term debt (\$14 billion) is approximately 8%, and argue that the long-term debt attributed to upstate water users should be reduced by this percentage. Consequently, Upstate Communities recommend that debt service costs associated with water facilities located north of the City should be reduced by \$5.3 million to reflect a reasonable, rather than excessive level of write-off associated with the Board's failure to collect 98% of revenues from in-city customers. (Teumim September 2006 Analysis, pp. 19-20.)

The Board objects to this proposed adjustment, and argues that the contentions made by Upstate Communities are speculative for the following reasons. First, Upstate Communities contend that the additional cash revenues that the Board should have collected would have been used to finance capital expenditures, which would reduce bond issues. The Board maintains, however, that the more prudent fiscal policy is to finance long-lived capital assets with long-term bonds rather than with cash. As a result, the cost of long-lived capital assets are recovered over the life of the asset by those who benefit from the asset. In contrast, operating costs should be paid with revenues collected during the period when services are rendered. (Amawalk December 2006 Report, p. 9.)

Second, the Board argues that any additional revenues collected from in-city water customers would have been shifted to another cost category, such as cash-financed construction, and upstate users would have to pay that portion of the annual cost associated with upstate facilities. The Board argues further that cash-financed construction could have the effect of increasing the upstate water rate due to the one time cash payment on an expensive long-lived capital asset. (Amawalk December 2006 Report, pp. 10-11.)

Finally, the Board argues that Upstate Communities' contention associated with default payments is not an actual cost. The Board maintains that an actual cost of supplying water to upstate water users includes debt service, which has been included in the total cost of supplying water to upstate communities. (Amawalk December 2006 Report, p. 11.)

By letter dated October 30, 2008 (p. 1), Upstate Communities propose to frame the bad debts issue as follows:

What is an appropriate bad debt policy and the ultimate effect of same on the cost of running the water system and its rates, and to what extent should the upstate communities bear the burden of higher debt costs resulting from the City's failure to timely collect overdue bills and/or bad debt of in-city customers?

In its October 30, 2008 letter, the Board reiterates its objection to the proposed issue. Nevertheless, the Board offers the following language (p.3), in the event that I find it appropriate to adjudicate the propose issue:

Should the Water Board be required to treat hypothetical revenue from hypothetical additional in-city collections in the FY'05 rate year as a substitute for some amount of long-term debt financing, and if so, should the rate for FY '05 be increased to account for the spending of the hypothetical revenue for capital projects in the rate year in lieu of using the proceeds of debt for such capital projects?

Ruling: The proposed issue related to bad debts or uncollectibles will not be adjudicated for the following reasons. First, delinquent water charges, pursuant to City code, are liens against the property and remain in effect regardless of when and to whom services were provided (Tr. pp. 40-41; see Amawalk December 2006 Report, pp. 8-9 n 7). Therefore, a mechanism is in place to collect delinquent payments from in-city water customers. Though delinquent water payments may not be collected during the fiscal year in which water is provided, delinquent payments are not written-off as argued by Upstate Communities. Because a mechanism to collect delinquent water charges from in-city water customers is already in place, the efficacy of the Board's collection practices is beyond the scope of this proceeding.

Second, as noted above, it is the Board's practice to finance long-lived capital assets with long-term bonds rather than with cash. As a result, the cost of long-lived capital assets are recovered over the life of the asset by those who benefit from the asset. With respect to operating costs, the Board prefers to pay them with revenues collected during the period when services are rendered. I find that the presumption asserted by Upstate Communities that the additional cash revenues that the Board should have collected from delinquent in-city water customers would have been used to finance capital expenditures, particularly upstate capital expenditures, is

speculative and, therefore, misplaced. As a result, debt service costs associated with upstate water facilities should not be reduced by \$5.3 million as recommended by Upstate Communities.

III. Record keeping and Discovery

In the Teumim September 2006 Analysis (pp. 3-4), and at the October 23, 2008 issues conference (Tr. pp. 60-63), Upstate Communities assert that the data and other information reported in the B&V May 2004 Report is largely unsupported. Upstate Communities state that their legal counsel filed discovery requests with the Board from April 7 until December 15, 2005 concerning the proposed FY 2005 upstate water rate. According to Upstate Communities' consultant, the discovery process was cumbersome, and generally impeded the progress of the case. The Teumim September 2006 Analysis (p.4) recommends guidelines for future proceedings.

By letter dated October 30, 2008 (pp. 1-2), Upstate Communities raise an issue about record keeping and propose to frame it as follows:

Does the City's lack of appropriate records, including some basic operating and cost data, and its failure and/or inability to produce certain basic plant account information, inhibit the ability to determine the efficiency of their operations? Given that the City is in a de facto fiduciary position, is it reasonable to identify, and request that the City rectify, any record keeping deficiencies moving forward so that Upstate Communities can effectively analyze the City's cost of service data? If the City makes it impossible to fully verify the costs due to the manner in which it chooses to keep its records, has the City failed to meet its burden of proof for an increase in rates?

In its October 30, 2008 letter, the Board states that it is unclear exactly what is intended by Upstate Communities' proposed issue concerning record keeping. The Board notes that upon request, it has produced all the data that was available, though perhaps not always in the form requested by Upstate Communities.

Ruling: There is merit to Upstate Communities' argument that the Board must provide a basis upon which to justify the proposed rate. To the extent that the Board does not, Upstate Communities may propose issues for adjudication with respect to a particular revenue or expenditure, and whether a particular revenue or

expenditure is associated with the upstate facilities. However, non-specific issues about how the Board has kept, keeps and should keep its records are beyond the scope of this adjudicatory hearing. Upstate Communities have not identified any legal authority that would allow the DEC Commissioner to oversee and direct the record keeping practices of the Board.

In addition, issues related to discovery are not issues for adjudication. On July 18, 2008, counsel for the parties and I participated in a telephone conference call to discuss the July 20, 2004 petition filed by Upstate Communities. During the conference call, the parties agreed to limit the scope of this proceeding to the upstate water rate effective July 1, 2004. The parties also stated that any discovery associated with the July 1, 2004 rate had been completed, and that the parties were ready to schedule the issues conference and adjudicatory hearing. Subsequent to the July 18, 2008 telephone conference call, I sent the parties a letter of the same date which summarized the discussion of the conference. I did not receive any correspondence from any party that responded to the July 18, 2008 letter, which stated that I had mischaracterized or misapprehended the discussion concerning the status of discovery.

At no time during the pendency of this matter have the parties moved for any relief related to discovery. The parties have not filed any motions for either an order to compel disclosure or one for a protective order. (See 6 NYCRR 624.7[d].)

In addition to the procedures outlined in 6 NYCRR part 603, the hearing procedures outlined in 6 NYCRR part 624 (Permit Hearing Procedures) are also applicable to this proceeding (see 6 NYCRR 624.1[a][6]). With issuance of this ruling, additional discovery is authorized pursuant to 6 NYCRR 624.7(b). Now that the issues for adjudication have been identified and framed, the parties must evaluate the benefits of requesting more information through the discovery process authorized by the regulations. If there are disputes related to discovery, the parties may move for relief. The regulations outline those procedures. (See 6 NYCRR 624.7.)

Appeals

During a hearing, any ruling by the administrative law judge to include or exclude any issue for adjudication, a ruling on the merits of any legal issue made as part of an issues ruling, or a ruling affecting party status may be appealed to the Commissioner

on an expedited basis (see 6 NYCRR 624.8[d][2]). Such appeals are to be filed with the Commissioner in writing within five days of the disputed ruling as required by 6 NYCRR 624.6(e)(1). However, this time frame may be modified by the ALJ in accordance with 6 NYCRR 624.6(g), to avoid prejudice to any party, and I choose to do so here for the follow reason.

To conserve judicial resources, I am briefly suspending the time to file appeals from this issues ruling pending the receipt of information from the Board concerning actual consumption data and an identification of the cost categories associated with the July 1, 2004 water rate that the Board seeks to true-up. I would then like to schedule a telephone conference call with the parties to ascertain whether the forthcoming information raises any more disputes. Based on the discussion during the telephone conference call, it may be necessary to reconvene the issues conference to determine which trued-up costs will be considered in the adjudicatory hearing.

Further Proceedings

I will schedule a telephone conference call with the parties after the Board provides additional information. Before scheduling the telephone conference call, I will inquire about the parties' availability and, subsequently, advise the parties of the date and time for the telephone conference call.

/s/

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
December 8, 2008

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