

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 20, 2014

COMMISSIONERS PRESENT:

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

CASE 13-W-0312 - Joint Petition of United Water Westchester,
Inc. and Village of Port Chester for Approval
of Use of Utility Asset for Non-Utility
Purpose.

ORDER GRANTING PETITION

(Issued and Effective February 25, 2014)

BY THE COMMISSION:

INTRODUCTION

On July 8, 2013, United Water Westchester, Inc. (UWW) and the Village of Port Chester (Port Chester or the Village) filed a Joint Petition requesting Commission approval of an agreement providing for UWW's use of its utility assets to calculate, bill, and collect sewer system charges for the Port Chester Sewer District. The arrangement would allow UWW to use sewer district residents' water usage data, collected as part of UWW's provision of water service, to calculate sewer bills.¹ On January 21, 2014, the petitioners filed their Sanitary Sewer Service Billing and Collection Agreement (Agreement), executed

¹ The Village will establish a rate for use of its sewer system; UWW will apply the rate to the quantity of water used, after matching its customers on Port Chester tax rolls, to calculate bills; and, it will collect the sewer rent on behalf of the Village, and transmit the revenues to the Village.

on January 1, 2014, establishing the terms and conditions for the arrangement.

Commission approval is required for a public utility to use revenues received from the rendition of public service for any non-utility purpose (PSL §107(1)); and, the Commission provides authorization for the use of customer information for operations other than core utility functions.

The Village currently uses property tax revenues to pay for the costs of operating the sewer system. It is required to reconstruct its sewer system at an estimated cost of \$15 million. The Village determined that a sewer rent based upon water usage would better allocate the project's cost to users of the sewer system which includes tax-exempt properties that currently do not contribute to the support of the sewer system.

In this Order, we grant the Joint Petition subject to certain conditions. We find that the arrangement will not adversely affect UWW's ability to provide adequate service at reasonable rates; ratepayers will directly benefit from the arrangement through the sharing of certain costs; and, the reconstruction of Port Chester's failing sewer system will promote important public interests in protecting public health and the environment. We authorize use of customer usage information to calculate bills for Port Chester since sufficient customer privacy safeguards are established in the Agreement and the otherwise requirement of obtaining the customer consent from approximately 5,500 accounts is not practical.

PUBLIC NOTICE

In accordance with State Administrative Procedure Act (SAPA) §202(1), notice of the petition was published in the State Register on August 7, 2013. On September 12, 2013, Senator George Latimer and Assemblyman Steven Otis submitted

comments in a joint letter. On July 8, 2013, UWW submitted a proposed notice, which it will post on its Web site, explaining its arrangement with Port Chester and the advantages of its billing system.

JOINT PETITION

UWW and Port Chester request Commission authority to use UWW utility assets to compute, bill, and collect sewer rent charges for the Port Chester Water District. The authorization is requested to enable the Village to fund an extensive \$15 million program to upgrade its antiquated sewer system.

Use of Water Usage to Calculate Sewer Rents

The Village of Port Chester, with a population of approximately 28,967, provides sewer service to its citizens, approximately 5,500 accounts; UWW supplies water service in the Village, using water supply that the Village purchases from New York City (New York Administrative Code §24-360 and Public Authorities Law Title 2-A) and Aquarion Water of Connecticut. The Village pays for its sewer system costs with property tax revenues.

The Village is embarking upon a multi-year \$15 million capital program to upgrade its sewer system, which, in some cases, is over 100 years old and originally constructed of clay pipe. In order to equitably spread the reconstruction costs to all users of the sewer system, the Village proposes to establish a sewer rent based upon water usage, because this arrangement generally results in greater billing equity and more accurate recovery of sewer costs, and also recovers sewer system costs from not-for-profit entities that do not pay property taxes. The Joint Petition states that the Village is authorized to impose sewer rents (General Municipal Law (GML) §452) and to charge sewer rents based upon water consumption data (GML §452).

Use of Utility Assets for a Non-Regulated Purpose

The Village requested that UWW provide water usage data for its use in calculating, billing, and collecting sewer rents. The Department of Public Service Staff raised concerns that transfer of customer usage information would conflict with the Commission's policy of protecting consumer privacy and the intent of Public Service Law (PSL) §89-b(6)). That section states that: "No water-works corporation shall sell or offer for sale any list of names of its customers." As a consequence, UWW and Port Chester entered into an agreement by which UWW would provide billing and collection services for the Village's sewer rents. The Commission's approval is required for UWW to dedicate ratepayer-funded assets to non-regulated service (PSL §107). Accordingly, UWW requests a Commission determination authorizing its limited use of utility assets for this non-utility purpose.

Benefits to Water Ratepayers

The Joint Petition states that the ratepayers of UWW and United Water New Rochelle² will receive significant benefits, in the form of compensation for partial use of utility assets, for a non-utility function. The Agreement between UWW and Port Chester will provide for full recovery of specific fixed and incremental costs. The incremental costs include bill stationary and printing, postage, administration of a lockbox, and a separate phone line. The petitioners state that Port Chester will pay a significant portion of the related fixed costs currently borne by UWW and United Water New Rochelle ratepayers, thereby lowering the billing and meter reading

² UWW and United Water New Rochelle share a common work force, including meter readers and customer service and call center personnel to achieve efficiencies and cost reductions. These employees will assume tasks associated with billing for Port Chester sewer rents.

expenses recovered from UWW and UWNR ratepayers. UWW will print the Village of Port Chester logo on sewer bills; establish separate and distinct accounts for sewer rents; and, will make payments to the Village of sewer rent collections the Company has received through deposits it makes to a separate lock box account that is solely under the Village's control.

Usage of Consumer Information

The Joint Petitioners state that they are mindful of consumer privacy concerns and will establish privacy protections, including UWW retention of consumer information and prohibition of disclosure to the Village of customer water usage data. The Village is not seeking to purchase customer lists or obtain water usage data. In the event a customer fails to pay a sewer rent bill, UWW will attempt to collect charges; if UWW is unsuccessful, it will provide certain information to the Village, so that the Village may institute an enforcement action or tax levy.

The Joint Petitioners point out that the Commission permitted the sharing of customer information, when it determined that the information was solely used in connection with analysis related to a customer behavioral program and, accordingly, did not fall within the PSL prohibition against sale of customer lists.

Agreement

The Agreement provides that Port Chester shall reimburse UWW for \$87,566 in one-time set-up costs, and pay an annual fee of \$241,027, beginning three months after the date of the first billing under the Agreement. The annual fee may increase or decrease annually based on the rate of inflation. If UWW provides billing and collection services for other municipalities and achieves economies of scale, the fee to Port

Chester shall be no greater than the fees charged to other municipalities located in the County of Westchester; and, UWW shall provide a credit to Port Chester for any reasonable portion of the Transition Costs for set-up of the billing and collection program. Port Chester shall reimburse UWW for any other incremental fees at cost and has a right to audit UWW sewer rent records. The petitioners intend to render the first bill for sewer rents no later than April 15, 2014, based upon water consumption from June 1, 2013 to the date of the most recent meter reading.

Under the Agreement, the Village shall establish rates for sewer rents, effective upon 45 days notice to UWW; UWW shall render bills quarterly for residential customers and monthly for commercial accounts, consistent with the issuance of UWW bills for water service; if a decision is made to provide monthly, instead of quarterly, billing for sewer service, Port Chester's annual fee shall increase by \$69,790 and the Village is required to pay an additional \$11,765 one-time initial set up charge. The Village shall provide UWW with tax roll account data, designate a lock box account for deposit of charges for sewer rents, and timely report receipt of payments. To the extent UWW provides information to enable the Village to collect for non-payment of sewer rents, the Village agrees not to resell or divulge the data or any other customer information and to treat such data as confidential proprietary information.

The term of the Agreement begins from the effective date of its execution, January 14, 2014, and expires on May 31, 2018. It is conditioned upon the Village of Port Chester Board of Trustees adoption of a local law implementing the sewer rent, approval by the UWW Board of Directors, and Commission approval of the Joint Petition.

COMMENTS

Senator George Latimer and Assemblyman Steven Otis, representatives of the Village, express strong support for reconstruction of the sewer system and urge the Commission to approve the Joint Petition. They state that the proposal for a private/public partnership at a time when fiscal constraints challenge the ability to meet the needs of its citizens serves the public interest. They maintain that authority for UWW to bill for sewer system use based upon water consumption is a logical method for the Village to improve the sewer system and make the EPA-ordered improvements to mitigate outflows to Long Island Sound. As a result of their service on Senate and Assembly Environmental Conservation Committees and other committees and their prior government experience, they understand the Village's needs and its proposal to equitably spread the costs of sewer system usage, upkeep, and maintenance.

The Legislators maintain that the proposed arrangement would not violate PSL §89-b(6), because no sale of customer lists is involved. They state that: the Village and UWW propose a framework that benefits UWW ratepayers and Port Chester residents; the arrangement satisfies consumer privacy concerns because UWW will have sole access to water consumption data, and the Village will not possess any information pertaining to consumption of specific customers.

BACKGROUND

Description of Port Chester and UWW

The Village of Port Chester Sanitary Sewer District encompasses the Village and small sections of the City of Rye and the Village of Rye Brook. The costs of operating the sewer system are recovered through Port Chester's property tax levies.

The residents of Port Chester do not received a separate bill for sewer service.

The Port Chester sewer system is facing several financial challenges. The system has not been properly maintained over the years; and, the United States Environmental Protection Agency (EPA) requires Port Chester to upgrade the sewer system to reduce outflows of sewage to Long Island Sound.

UWW regularly tracks ratepayers' usage through meters in order to bill ratepayers for the water usage. Fire protection service is billed on a per hydrant basis.³

DISCUSSION

UWW possesses experience and expertise in billing and collection services for its water system. The services are related to its primary function and duties; and, its utility assets and property enable the Company to provide sewer rent billing and collection services to Port Chester in a cost-effective manner.

PSL §107 Authority

Given the opportunities for UWW to participate in this endeavor, particularly because its participation benefits its customers and facilitates a Port Chester construction project that is of public importance, we authorize UWW to provide the sewer rent service requested by Port Chester. The transaction is designed to recover the incremental cost of the UWW services provided to Port Chester; and, UWW's water ratepayers are

³ A recently enacted section of the Unconsolidated Laws authorizes municipalities in Westchester County that pay directly for water service provided to fire hydrants to petition the Commission for approval of a water utility rate designed to reallocate these fire protection service costs to the general body of ratepayers (Chapter 433 of the Laws of 2013). A number of municipalities filed petitions, including Port Chester (Case 13-W-0578, Port Chester - Distribution of Public Safety Infrastructure Costs).

benefited by the allocation of non incremental fixed costs to Port Chester. We find that, subject to the modifications contained herein, the compensation arrangement is fair and reasonable for UWW ratepayers and Port Chester.

Accounting and Ratemaking Treatment

We require UWW to directly charge all incremental cost incurred in the provision of sewer billing services to non-utility accounts. Regarding other costs related to sewer billing services, we require UWW to apportion a percentage of meter related costs to sewer non-utility accounts, since the Company will use these utility assets to measure usage for billing purposes for both water and sewer services. The costs should include not only meter reading costs, as proposed in the Company's petition, but also meter infrastructure-related costs. The Company's estimate of the additional costs as adjusted by Staff are reflected on the attached Appendix. These meter infrastructure-related costs would include expenses booked in Account 663 Meter Expense and Account 676 Maintenance of Meters Expense, depreciation of meters, and the Commission-authorized return requirement on the meter investment included in rate base.

UWW is required to allocate meter reading costs based on the number of sewer bills issued as a percentage of total sewer and water bills issued; this is reasonable because the overall level of meter reading costs is related to the number of bills issued. This method of allocation will also accommodate any future decision, authorized in the proposed contract, to bill for sewer service on a monthly, instead of quarterly, basis. The meter investment costs, depreciation, and related Operation and Maintenance costs, however, should be allocated, based on the number of sewer customers as a percentage of the total sewer and water utility customers. These costs do not

vary by the frequency of billing for water service and sewer service.

The Commission has allowed water utilities to retain a portion of rent revenues from the use of water towers by cellular phone providers to locate antennas. Similarly, we will allow UWW to reduce the allocation of sewer non-incremental costs by 50% when charging these costs to non-utility accounts. An estimate of the allocation of the Company's costs for the proposed sewer services based on the methodology described above is presented in the Appendix to this Order. Based on this estimate, ratepayers will benefit by the allocation of approximately \$123,474 in non-incremental costs to non-utility accounts.

The amount of water utility cost reductions that result from sharing of non-incremental costs at UWW under the operation of the Agreement are material.⁴ This reduction in water utility costs is not reflected in UWW's rates. We require UWW to record regulatory liabilities for the amount of non-incremental costs allocated to sewer billing and collections operations, until the Commission makes a determination on its rates in the pending rate proceeding filing.

Ordinarily, we would require full allocation of non-regulated costs to non-regulated businesses to avoid cross subsidization of competitive operations. However, billing for a captive municipality sewer service is not a truly competitive venture and in this instance full allocation would cause the utility shareholders to lose money. Therefore, due to the public and ratepayer benefit associated with this arrangement

⁴ Any allocation of costs between UWW and United Water New Rochelle for the sewer rent service will be considered in their pending rate cases (Case 13-W-0539, United Water New Rochelle Inc. - Rates and Case 13-W-0564, United Water Westchester Inc. - Rates).

the less than full allocation of fixed costs is appropriate to incent the utility to pursue this venture. Our approval of this proposed sewer billing and collection agreement between the UWW and Port Chester and the conditions imposed are related to the specific circumstances presented in the petition and does not authorize or extend to other similar arrangements that UWW may pursue with other municipalities located in its service territory.

Use of Customer Usage Information

The Commission's policy is to restrict use of ratepayer information to core utility functions; and, disclosure to third parties is only authorized when it serves a compelling public or utility interest and, ideally, follows upon the informed consent of the ratepayer. For example, the Commission allowed the unblocking of caller information, without the caller's consent, for transfers of calls to New York City's 311 Municipal Information Call Center to 911, including calls for non-emergency City services.⁵ It reasoned that the action promoted public safety and immediate access to emergency services and served the public interest.

To encourage energy conservation, the Commission authorized electric and gas utilities to provide customer usage data to OPower, an administrator of behavioral modification

⁵ Case 03-C-0171, City of New York - Unblocking Caller ID Information, Order Granting Petition with Conditions (issued April 18, 2003).

programs.⁶ These programs encourage participants to reduce energy consumption through personalized reports comparing their usage to that of similarly situated customers, estimated to induce up to a 2% energy use reduction. The Commission authorized disclosure because OPower is performing a ratepayer-funded utility function; it demonstrated that customer consent was not practical; it needed to obtain access to the information to administer the program; the program encouraged conservation; and, sufficient customer privacy safeguards were established in the agreement.

We authorize UWW's use of customer usage information for calculating, billing, and collecting Port Chester's charges for sewer usage. The Village seeks UWW assistance to establish effective billing and collection services as a means of facilitating financing for its sewage improvement project, in compliance with EPA regulations, and to improve the environment and public health. Accordingly, a compelling public interest supports UWW's limited use of customer usage information for the benefit of Port Chester and advancing the public interest in improving public health and the environment. The residents of Port Chester, who are the same ratepayers who would be affected if the petition is granted, have a direct interest and voice in the Village's actions, which provides another layer of protection against improper use of customer data. It is not practical or feasible for Port Chester to obtain the consent of the estimated 5,500 impacted customer accounts. Under the proposed agreement, UWW maintains possession and control of its

⁶ Case 07-M-0548, Energy Efficiency Portfolio Standard; Case 08-E-1133 - Niagara Mohawk Power Corporation - Energy Efficiency Portfolio Standard; Case 08-E-1135, Central Hudson Gas & electric Corporation - Energy Efficiency Portfolio Standards; and, Case 09-G-0363, Gas Energy Efficiency Programs, Order on Rehearing Granting Petition for Rehearing (issued December 3, 2010).

customers' water usage data throughout the billing and collection process and requirements are established for Port Chester's protection of the confidential nature of any information it obtains to pursue recovery of delinquent amounts. These protections are expected to provide sufficient customer privacy safeguards.

Because this service is separate and apart from UWW's core water service, UWW shall not take advantage of its name recognition in relation to its sewer rent billing and collection service, including, as it states in its petition, the UWW use its name or logo, the name of its parent company, Suez Environment, or its logo, and/or the name and logos of its affiliates. UWW shall use the Village of Port Chester logo on sewer bills and any other communications involving the sewer rent services it provides to Port Chester.

CONCLUSION

We grant the Joint Petition subject to the cost allocation requirements discussed herein. Ratepayers will directly benefit from the arrangement through sharing of certain costs and the reconstruction of Port Chester's failing sewer system will promote important public interests in protecting public health and the environment. We authorize use of customer usage information to calculate bills for Port Chester sewer rents. The program will facilitate reconstruction of the sewer system to advance important public health and environmental interests; the costs and difficulty relating to securing customer consent for approximately 5,500 customer accounts are prohibitive; and, the Agreement establishes sufficient customer privacy safeguards.

The Commission orders:

1. United Water Westchester, Inc. is authorized to enter into an agreement with the Village of Port Chester, effective from the date of its execution, January 13, 2014, and continuing in effect until May 31, 2018, to administer billing and collection services for the Village's sewer rents, in accordance with the discussion in the body of this Order.

2. United Water Westchester, Inc. is required to file with the Secretary within 30 days after the issuance of this order detailed accounting and cost allocation procedures for transactions under this contract including the allocation of costs from affiliates, in accordance with the discussion in the body of this Order.

3. United Water Westchester, Inc. is directed to record regulatory liabilities for the amount of non-incremental costs allocated to sewer billing and collections operations, until the Commission makes a determination relating to recovery of the costs in the Company's pending rate proceeding.

4. The Secretary in her sole discretion may extend the deadlines set forth in this Order, provided the request for such extension is in writing, including a justification for the extension, and filed on a timely basis, which should be on at least one day's notice prior to any affected deadline.

5. This proceeding is closed, after compliance with the requirements in ordering clauses 2 and 3.

By the Commission,

KATHLEEN H. BURGESS
Secretary

Case 13-W-0312									APPENDIX
United Water Westchester Inc.									
Schedule of Allocated Costs for Proposed Village of Port Chester Sewer Billing & Collection Agreement									
	<u>Per Company</u>			<u>Commission Adjustments</u>			<u>Per Commission</u>		
	Incremental	Non- Incremental	Total	Incremental	Non- Incremental	Total	Incremental	Non- Incremental	Total
BILLING	\$ 17,039	\$ 23,950	\$ 40,988			\$ -	\$ 17,039	\$ 23,950	\$ 40,988
CC&B Setup Costs	-	-	-			-	-	-	-
PAYMENT PROCESSING	14,546	6,716	21,262			-	14,546	6,716	21,262
PHONE SERVICE COSTS	1,688	-	1,688			-	1,688	-	1,688
LABOR COSTS	42,058	38,267	80,324		10,341	10,341	42,058	48,607	90,665
MANAGEMENT	-	8,820	8,820			-	-	8,820	8,820
FACILITY	-	8,584	8,584			-	-	8,584	8,584
IT	-	-	-			-	-	-	-
CC&B Depreciation	-	43,207	43,207		(8,873)	(8,873)	-	34,334	34,334
Meter Expense					11,657	11,657	-	11,657	11,657
Meter Maintenance					11,043	11,043	-	11,043	11,043
Total Expenses	75,330	129,543	204,873	-	24,167	24,167	75,330	153,710	229,040
Meter Investment Return Requirement		36,154	36,154		57,084	57,084		93,238	93,238
Total Costs	75,330	165,697	241,027	-	81,250	81,250	75,330	246,947	322,277
Reduction @50%								(123,474)	(123,474)
Total Cost Allocation	75,330	165,697	241,027	-	81,250	81,250	75,330	123,474	198,804