

Case 23-W-0111

Response to Joint Proposal

January 26, 2024

The following response to the Joint Proposal in Rate Case 23-W-0111 is filed on behalf of the groups and individuals signed below, including Sierra Club Atlantic Chapter, representing 46,000 members in New York State. Since 2013, Sierra Club has represented primarily environmental interests in this and at least four other previous PSC cases.

All of the groups and individuals signed on to this letter are parties in Rate Case 23-W-0111. Many of us belong to the Rockland Water Coalition, which includes local civic and environmental groups, as well as major regional and national groups such as Scenic Hudson, Riverkeeper, Food & Water Watch, Sierra Club, and more. Since 2008, we have worked together to protect the quantity, quality, and affordability of Rockland's water supply.

SUMMARY

The undersigned parties to this case are hereby responding with the following position on the Joint Proposal.

WE SUPPORT

- Support GHG Inventory and Decarbonization Plan but oppose long timeline
- Support removal of rewritten liability clause, which would have exempted the company from any and all claims for injury to persons or property by reason of fire, water, or failure to supply water pressure or capacity.

WE OPPOSE

- Conservation Plan as currently written. Plan is in need of critical review and substantial improvement.
- Failure to include study of impacts of climate change on water supply and to plan to address those impacts in a timely way.
- Failure to aggressively reduce cost burden on ratepayers for PFAS filtration with public funding and potential awards through lawsuits against PFAS manufacturers.
- 26.8% rate increase over four years
- Consolidation of rates with upstate systems
- Increase in rate of return on remaining \$28 million of Haverstraw Water Supply charges.

See also discussion of process issues below.

CONTEXT OF THE ISSUES IN THIS CASE

In 2007, United Water (later to become Suez and then Veolia) proposed a massively expensive desalination proposal. Opposition to the proposal grew almost immediately. In 2012, DEC hearings drew overflow crowds in opposition. In 2013, 1,600 Rockland residents turned out to PSC hearings over the course of two nights. 1,768 written comments were submitted in Rate Case 13-W-0303, nearly all of them opposed to the proposal - and over 24,000 signatures were collected on petitions opposing the project.

In the pursuit of this proposal, United Water/Suez spent an astounding \$62 million+, despite the fact that construction of the project never broke ground. Ratepayers were ultimately saddled with \$54 million of those expenses (plus tens of millions in interest), despite widespread opposition to the proposal from the start.

All of this occurred under the watch of the staff of the Public Service Commission and the Department of Public Service. The Commission had authorized the pursuit of this project without a rigorous review of the alternatives – and then continued to authorize expenditure of tens of millions of dollars. The company continued to pursue this project *even despite declining demand*. It stands to reason that the Public Service Commission does not want to repeat this experience – and the company should not want to either.

We continue to work to avoid the need for a major new supply source for the following reasons:

- **Cost impacts of major new supply source:** According to a 2017 report by Comptroller DiNapoli, Veolia’s Rockland residents already pay among the highest water rates in the state¹. That’s in addition to the \$28 million remaining desalination surcharge plus interest and the cumulative 26.8% increase proposed in this joint proposal. In addition, Veolia’s Rockland residents face the cost burden of the installation and ongoing costs of filtration to remove PFAS chemicals, amounting to \$66.5 million so far – *prior to new EPA regulations, which will add tens of millions of dollars more*. Rockland’s water rates are in danger of becoming unaffordable even for moderate income households and for businesses.

¹ [Drinking Water Systems in New York: The Challenges of Aging Infrastructure](#), Office of the New York State Comptroller, 2017

- **Climate impact of desalination and wastewater reuse:** Desalination and wastewater reuse are the two most energy-intensive water supply sources of all. New York State has set aggressive goals for total reduction of emissions, 40% by 2040, 85% by 2050. The energy-intensive water sector must be an essential part of climate solutions. Note that groundwater-based systems are apparently more energy intensive than surface water-based systems, which is even more reason to reduce demand.
- **Other environmental impacts of desalination, such as potential harm to officially rated Irreplaceable Habitat in the Hudson River**
- **Potential health impacts from wastewater reuse**

In the December 2015 Order of the Commission², the company was directed to maximize alternatives that could help forestall or avoid the need for a major new source, including conservation, efficiency, and reduction in the high leak rate.

Since 2015, the company has not made the steps needed to maximize alternatives. The Rockland Water Coalition has continued to advocate for impactful, sustainable water policy, including:

- Watershed planning
- Vigorous conservation and efficiency programs – through the county and through the utility
- Possible restrictions where needed, such as lawn watering restrictions
- More proactive drought planning
- Reduction of leaks/accelerated maintenance of infrastructure

OPPOSITION TO THE JOINT PROPOSAL

Within this context, the Rockland Water Coalition continues to work to further sustainable water policy that will obviate or delay the need for a major new source. We therefore oppose the Joint Proposal because it fails to address these concerns.

We see the following positive or mixed results of the joint proposal:

New clause on liability removed: Several intervenors objected to the new language proposed by the company, which would have exempted the company from any and all claims for injury to persons or property by reason of fire, water, failure to supply water pressure or capacity. We are glad to see it gone. It is extremely troubling, however, that the potential harm from this

² <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=13-w-0303&submit=Search+by+Case+Number>

clause had to be highlighted by a ratepayer and not by the Department of Public Service (DPS), which is charged with protecting consumer interests.

GHG inventory and Decarbonization plan: At the outset of this case, Veolia had no plans for climate mitigation and DPS did not initially require climate mitigation, although the PSC is one of the agencies charged with implementation of New York’s Climate Act. The company has now agreed to a GHG inventory and decarbonization plan.

However, despite New York’s **2030** timeline for 40% reduction of climate emissions, the company was given **four years** to prepare the decarbonization plan, so that implementation would begin only in year five, in **2029**. **Given the urgency of the climate crisis, this timeline is patently absurd, especially for the world’s largest water company. By contrast, the NYS Climate Scoping Plan for all sectors of the entire state was prepared over the course of two years.**

It is also troubling that the staff did not require a decarbonization plan until parties to the case brought this issue up. **Now we ask for the decarbonization plan to be drafted as early as possible, with a fully transparent approval process, with robust opportunity for public participation, and with implementation beginning within two years. It is recommended that this plan also be evaluated on a monthly basis so that peak demands associated with high demand months can be assessed.**

Low Income Affordability Plan: Without commenting on the details, after seven years, we are glad to see a plan adopted.

SIERRA CLUB ATLANTIC CHAPTER OBJECTS TO THE JOINT PROPOSAL FOR THE FOLLOWING REASONS

26.8% CUMULATIVE RATE INCREASE OVER FOUR YEARS: This is an outrageous increase. The very high costs of Rockland’s water, which were cited by Comptroller DiNapoli, are a result of decades of PSC approval of high utility rate increases plus the desalination failure in planning under the supervision of the Public Service Commission and DPS. The combined results of this proposed very large rate increase plus the PFAS costs will push Rockland’s rates to the limits of affordability and should be rejected.

CONSERVATION PLAN

One of the keys to avoiding a major new supply source is a vigorous conservation plan, coupled with strong public outreach.

Now, six years after adoption of the first water conservation plan in the state, a rigorous review of the water conservation program for Rockland County is overdue and necessary. It is important to get it right: whatever is worked out here could serve as a model for New York State water policy at a time of increasing uncertainty about water supply in the face of climate change.

Experts hired by the Water Coalition in one rate case after another (with two sets of comments filed again in this case) have found that the current plan can be substantially improved by drawing on best practices that have proven successful in other communities. See below for some of the problems with the current plan - and recommendations made by experts hired by the Rockland Water Coalition and the Rockland County Water Task Force.

Rebates: The current plan is largely based on - and its effectiveness is measured by – rebates, almost entirely for efficient indoor fixtures. In fact, these efficient indoor fixtures are already **required** for new construction in New York State, with the result that it is highly likely that a large percentage of the rebates are going to “free riders”.

Consider direct install programs where rebates would have the most cost effective impact.

See recommendations of Prof. Dan Van Abs, filed in this case³.

New York State should give strong consideration to using an energy conservation concept in water conservation, where the utility through its contractors develops cost-effective savings approaches, implements them for the customer, and shares the benefits of water, sewer and energy cost savings. One alternative is that the installation costs would be repaid to the utility through customer bills, potentially with incentives, with the provision that these bills would be equal to or lower than the pre- installation levels.

Water audits: Veolia’s audit program is restricted to indoor fixtures, primarily bathroom fixtures, overlooking some of the most significant potential savings. Audits and rebates should be reconsidered to include some of the following, which may offer much larger potential savings:

³ Prof. Dan Van Abs, *Recommendations for Water Supply, Conservation and Efficiency Requirements in New York State*, July 2020. See attached.

- Commercial refrigeration equipment (that circulates cooling loop water)
- Other commercial kitchen equipment
- Cooling tower improvements
- Medical / scientific equipment
- Changes in landscaping
- More efficient irrigation systems
- Irrigation technical assistance and billing analysis
- Custom incentives that can cover up to 50% of the installed cost of water-saving projects

One of the problems plaguing Veolia’s water audit program - low implementation rate for recommendations - has also been experienced by many other communities. The solution that has helped boost implementation of recommendations (and resulting water savings) in other communities is that the water audit program should require recipients of free audits to sign a letter of intent to move forward on recommendations with a payback period of two years or less.

The current program fails to focus on peak summer use and lawn watering – Consider including residential and non-residential irrigation audits, targeting those customers with in-ground systems and high water use. Include a performance metric for peak summer demand. Peak summer use and automated lawn watering were specifically named by United Water as among the drivers for increasing demand, leading to the desalination proposal.

The current program fails to focus on the largest water users. Focusing on the largest users will have the biggest impact in reducing demand. Prof. Dan Van Abs, former Head of Watershed Protection for the State of New Jersey Public Water Supply, makes the following recommendations in comments⁴ filed in this case:

New York State should require identification of high-demand customers and an evaluation of how their demands could be reduced through cost- effectiveness programs.

As of mid-2020, when SWNY has fully operationalized its AMI program with customer online access, SWNY should be in a position to identify those super-users to a much

⁴ Prof. Dan Van Abs, *Recommendations for Water Supply, Conservation and Efficiency Requirements in New York State*, July 2020. See attached.

more granular level, allowing for targeted messages to them through billing notices, rebate offers, and even residential water audits.

Renowned water conservation expert Amy Vickers also pointed to the high impact of these “super users,⁵”, recommending that this be a focal area for water conservation for the Rockland system.

Current performance metrics exclude critical peak summer use. Note that a report on Rockland’s water, prepared by Amy Vickers for the Rockland County Water Task Force, includes many of the same water conservation recommendations⁶.

Prof. Van Abs made the following recommendations on this topic:

SWNY’s proposed performance metric “**is entirely inadequate**” because it does not link sufficiently to the actual problems of aquifer limitations and peak summer month demands. Summer demands drive peak day and peak month demands, which should be critical metrics for system capacity.

The performance metric should also include other sectors with larger customers. SWNY’s proposed performance metric would measure *only* single-family residential demand. However, “the most cost-effective approaches are generally those that achieve savings from larger customers...”

Best practices in other communities, filed in the attached expert comments, have been dismissed by DPS and by the company with little response.

In this rate case, we asked that the company be directed to hire an independent consultant to review these expert recommendations and to make recommendations to improve the effectiveness of the conservation plan. This request for an independent review was also dismissed without opportunity for input and discussion by parties to the case.

Through interrogatory requests, we were informed that DPS is satisfied with the plan because the company has not filed a request for new water supply sources:

⁵ Amy Vickers, *Water Losses And Customer Water Use In The United Water New York System*, July 2015. See attached.

⁶ Amy Vickers, *Water Losses And Customer Water Use In The United Water New York System*, July 2015

Insofar as supply shortfalls that would necessitate more expensive supply sources have not emerged, DPS Trial Staff considers the program to be effective⁷.

It should be abundantly clear that by the time the company files a request for new water supply sources, it will be far too late to ask for a review of the conservation plan, let alone to implement improvements. In fact, demand is already at 85% of supply capacity. Now is the time to plan to maximize demand reduction - and to implement those plans. **We strongly object to the failure to include a requirement for the company to hire independent consultants to recommend improvements to the plan, which could be implemented following the next rate case.**

FAILURE TO PLAN FOR CLIMATE IMPACTS ON OUR WATER SUPPLY: The company should plan now to ensure that our water supply will be resilient in the face of climate change.

Some widely agreed upon climate impacts on drinking water supply include⁸:

- More **erratic weather**
- Higher **temperatures and longer growing season**, resulting in increased demand for water during the growing season for irrigation of residential lawns and larger areas in parks, athletic fields, office parks, etc.
- Increasing **risks when droughts occur in warmer temperatures**
- More **intense precipitation**, resulting in more runoff and decreased replenishment of groundwater. In Rockland, it will also result in spillover from the dam (and loss of water to the Rockland system)
- Water **quality impacts**: Flooding can result in contamination of water supply with toxic chemicals, bacteria, and turbidity
- Warmer **temperatures is also one of the key factors leading to algal blooms**. Veolia has failed to take proactive steps to reduce the community-wide use of chemicals which contribute to the algae.
- Potential for **destruction of above ground water infrastructure** due to extreme weather
- **Increased flooding**. In Rockland this includes flooding from the reservoir, which has severely flooded surrounding neighborhoods in the past.

The company's Long Term Plan explicitly states that it is not planning for climate change⁹. In this rate case, the company has continued to state that there is no need to plan for the impacts

⁷ DPS Response to Sierra Club Atlantic Chapter Interrogatory Questions 72 and 73, July 21, 2023. See attached.

⁸ <https://www.awwa.org/Portals/0/Awwa/Publishing/Manuals/M71LookInside.pdf>

⁹ VEOLIA WATER NEW YORK INC., *Long Range Strategic Plan Case 94-W-0066 For the Years 2022-2031*, p. 82.

of climate change on our water. This is despite a study¹⁰ by consultants to the Rockland County Water Task Force that pointed to concerns about the failure of groundwater supplies in the event of extended drought.

Despite increasingly extreme weather, the company states that it is not necessary for it to plan now for the impacts of climate change on Rockland’s drinking water. The somewhat oblique company response to an Interrogatory on the topic of **planning for climate change** was, “Given currently available water supply, there is no additional water supply development currently needed, nor associated costs included in this current rate filing, and none are currently planned over the next 5 years period in Rockland¹¹.”

It should be noted that Rockland County declared a Stage II Water Emergency during the summer of 2022, due to hot and dry conditions that led to unprecedented low flow levels in the Ramapo River and its tributaries, limiting the use of Veolia’s Ramapo Valley Well Field, and also low water levels in the DeForest Reservoir,. Due to high demand, mostly associated with higher lawn watering, the emergency triggered mandatory water restrictions, which included limiting outdoor water usage, and were applicable to all residents and businesses. This is the exact scenario that climate scientists predict will occur with growing frequency.

The **company should be directed to hire experts to conduct a study assessing the risks to the quantity and quality of Rockland’s water supply – and to file a plan to meet those challenges.** Instead, the company agreed to include comments in their testimony in the next rate case: “As part of its next rate filing, the Company will include in testimony an assessment of the vulnerability of its water supply, water quality, and infrastructure to the effects of climate change, and how the Company intends to mitigate identified vulnerabilities.” This is still not a formal study or a plan. With increasingly extreme and erratic weather, it is foolhardy to wait until 2029 to *begin* this process.

Climate planning should also include:

- **A reevaluation of safe yield in the light of climate and other factors**
- **A plan to work with the county on an updated and more proactive drought management plan**

COSTS OF PFAS FILTRATION – INSTALLATION AND MAINTENANCE

¹⁰ CDM Smith Memo *Drought Simulations using the Newark Basin Groundwater Model: FINAL*, March 22, 2016. <https://www.rocklandcountyny.gov/home/showpublisheddocument/1664/638216469422130000>

¹¹ Veolia Response to Sierra Club Interrogatory #1, questions 1 - 4. See attached.

To date, the company has spent \$66.5 million to install filtration for 13 wells. New regulations for PFAS in water are under review by both the EPA and the NYS Department of Health regulations. Once those new regulations go into effect, the company will be required to filter approximately 31 additional wells, with final costs apparently headed to well over \$100 million. This is in addition to ongoing costs for maintenance of the filtration systems.

Despite these huge costs, the company did not intend to apply for public funding and financing¹². In addition, despite the fact that other utilities have won major awards from manufacturers of PFAS chemicals through lawsuits¹³, Veolia, the largest water company worldwide, has not won a single lawsuit so far and all charges filed by Veolia have been dismissed in court except for one charge against one chemical manufacturer. A global water company surely can do better if it truly is committed to protecting ratepayers.

Again, it is also troubling that it was a ratepayer - not the utility and not DPS - that found that private utilities are eligible for federal funding.

It is stunning that DPS continues to maintain that they are *not aware* of public funding for PFAS filtration, even despite information posted in this case. This points to a much larger problem, that the staff is only reacting to what is filed in this case, in particular by the company. DPS apparently is not pursuing information to protect ratepayers, even information from another state agency – and even when that information has been filed by other parties in a case.

The JP includes only a requirement for annual *reporting* on efforts to obtain funding to reduce the cost burden on ratepayers. **If DPS continues to be “unaware” of public funding, then what prospect is there for accountability for the company? What kind of serious review is possible by DPS of those annual reports in the absence of any independent information about funding?**

PROPORTIONATE SHARING OF COSTS OF INFRASTRUCTURE FOR NEW DEVELOPMENT

The final proposal for cost sharing for water infrastructure development necessary for large projects places a high burden on ratepayers. We were told that this arrangement will not become a precedent for future developments. We believe the language needs to be modified

¹² Veolia Response to Sierra Club Atlantic Chapter Interrogatory # 7, question 57. See attached.

¹³ [https://www.reuters.com/legal/litigation/forever-chemicals-were-everywhere-2023-expect-more-litigation-2024-2023-12-28/#:~:text=Dec%2028%20\(Reuters\)%20%2D%20Lawsuits,U.S.%20will%20spur%20more%20litigation](https://www.reuters.com/legal/litigation/forever-chemicals-were-everywhere-2023-expect-more-litigation-2024-2023-12-28/#:~:text=Dec%2028%20(Reuters)%20%2D%20Lawsuits,U.S.%20will%20spur%20more%20litigation)

to make this explicit. It is also unclear how it will be determined for which projects developers will be required to pay for infrastructure upgrades.

NON-REVENUE WATER/REDUCTION OF LEAKS

Among the components of Non-Revenue Water are real losses or leakage. To the extent real losses can be reduced, less supply is needed to meet demand. In other words, demand is reduced.

In Rate Case 16-W-013, Suez's NRW represented 24% of total water produced for Suez customers. The Company was directed to set an initial goal of reducing NRW to 18% by the end of the rate plan. That goal was not reached. A similar goal was adopted in the next rate case, 19-W-0168.

In the Joint Proposal in the current rate case, the same goal (18%) is again being recommended. However, NRW is currently estimated to be approximately 22%.

We recommend that the PSC incorporate penalties in this rate case for Veolia in the event that it does not reach the 18% NRW goal by the end of the term that starts in July of this year, over the next four years.

INCREASE IN RATE OF RETURN FOR \$28 MILLION REMAINING CHARGES FOR HAVERSTRAW WATER SUPPLY PROJECT

MERGER OF RATES WITH UPSTATE SYSTEMS/ROCKLAND RATEPAYERS TO PAY FOR REPAIRS

TO UPSTATE SYSTEMS: The company plans for Rockland ratepayers to subsidize repairs for two upstate communities. The company should be able to merge as many companies as the Commission approves. But ***a merger of rates should only be approved when it is in the interests of all affected communities.*** In this rate case, DPS has explicitly stated that the merger will *increase* costs for Rockland ratepayers by as much as 1.61%¹⁴. DPS must make itself aware of funding for small public systems, which could preclude the need for these mergers.

PROCESS ISSUES IN THIS CASE:

Little or no response to input from stakeholder parties to the case, including sometimes blanket refusal to discuss legitimate issues, with no substantive reasons given.

DPS works reactively. We have been told that Staff does not look at best practices elsewhere and rarely hires consultants, even when reviewing a new program or technology that has not previously been implemented in New York State.

¹⁴ Veolia Response to Municipal Intervenors' Interrogatory MI S-2, July 14, 2023. See attached.

DPS's response that they are unaware of federal funding for private water systems raises the question of how staff are evaluating company proposals. Even more stunning is the fact that even once informed of this funding, DPS has not made an effort to learn more, so that it can hold utilities accountable.

DPS does not appear to consult with other state agencies that may have expertise in areas in which they are making decisions.

Trial Staff does not appear to have the technical expertise in water planning and conservation needed to make technical decisions on these issues.

DPS is not reviewing the impacts of climate change on drinking water supplies. Nor is it consulting with other agencies that may have expertise in this area.

Major problems with access to hearing: Links to the virtual public statement hearings didn't work. The corrected link did not work from smartphones. There was no one staffing the technical helpline and no one responded to voicemail asking for help. This is inexcusable and indicates dismissiveness toward stakeholder input.

We hope that DPS will consider an internal review of the process problems.

CONCLUSION

The parties signed below oppose this joint proposal because, as detailed above, it is not in the public interest. We ask that judges review the issues detailed here and recommend against the joint proposal unless the problems are corrected.

In the end, the current Joint Proposal would lead to further lost time and wasted expenditure of ratepayers' money, with ineffective conservation measures, insufficiently effective maintenance, and lack of preparation for the impacts of climate on our water supply.

We are likely to meet very real challenges in the next few years. A failure to prepare and to use this time to advantage may well lead us back to yet another proposal for another massively expensive and environmentally harmful project. Together with the company, we can, instead, create a model policy based on best practices in conservation and efficiency, watershed

protection, source water protection, and better maintenance. Rockland's future greatly depends on such collaborative efforts.

Signed,

Peggy Kurtz for Sierra Club Atlantic Chapter

Bruce Levine

Dorice Madronero

Deborah Munitz for ROSA 4 Rockland

Laurie Seeman

Susan Shapiro for LEAF

Terri Thal for West Branch Conservation Association

Robert Tompkins

Attachments:

Prof. Dan Van Abs, *Recommendations for Water Supply, Conservation and Efficiency Requirements in New York State*, July 202

Amy Vickers, *Water Losses And Customer Water Use in The United Water New York System*, July 2015

[Aiqueous, *SWNY Water Conservation – Review*, 9.23.19](#)

VEOLIA WATER NEW YORK INC., *Long Range Strategic Plan Case 94-W-0066 For the Years 2022-2031*

Veolia Response to Municipal Intervenors' Interrogatory MI S-2

Veolia Response to Sierra Club Interrogatory #1

Veolia Response to Sierra Club Interrogatory # 7

DPS Response to Sierra Club Interrogatory