Written Testimony

Joint Public Hearing: Oversight of the Public Service Commission's processes related to rate case and generic proceedings

State Senate Hearing on the New York State Public Service Commission

Hosted by Senators Leroy Comrie, Chair, Senate Corporations, Authorities and Commissions Committee and Kevin Parker, Chair, Senate Energy Committee

September 30th, 2025

Peggy Kurtz

INTRODUCTION

My name is Peggy Kurtz. I focus here on the Public Service Commission's (the Commission) oversight of water utilities.

As one of the co-founders of the Rockland Water Coalition, I was one of the leaders in an eight-year successful effort to stop a desalination proposal for Rockland County's drinking water.

Since then, I have been an intervenor on behalf of Sierra Club's Atlantic Chapter in seven proceedings before the Commission, advocating for a financially and environmentally sustainable water policy. Since 2016, I have also served as an appointed member on the Rockland County Water Task Force.

But my comments today do not represent any of these organizations and I speak today as a ratepayer.

BACKGROUND

Rockland's desalination story is a cautionary tale. When regulatory oversight fails, it is the ratepayers who pay the price. I focus here on our story as an example of underlying structural problems.

Veolia Water, formerly Suez, manages approximately 90% of Rockland County's drinking water supply and their operations are largely overseen by the Commission.

In 2008, the Rockland Water Coalition, which included over 30 major regional and smaller groups, came together to eventually defeat Suez' desalination proposal for Rockland County.

Suez's proposal raised numerous objections, including that desalination is amongthe most expensive major water sources to build - and to operate. In 2013, the final projections for construction costs were between $155 and $200 million[1].

In 2015, the Commission reversed **eight years of** approvals to order Suez to abandon that project as ***not needed.***

[1]REVIEW OF COST INFORMATION IN THE HAVERSTRAW WATER SUPPLY PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT, Ed MacMullan, ECONorthwest, 2012. Filed in EIS proceedings in 2012, when the costs were projected between $139 million to $189 million. Later projections were at $155 million to $189 million.

In other words, the Commission allowed this proposal to get eight years and $62.4 million

down the road before putting on the brakes.

Even though the project never broke ground, Rockland ratepayers are still paying off over $54 million[2] plus tens of millions of dollars in interest for planning costs for a project from which they received *no benefit at all.*

That's because the Department of Public Service Staff (Staff) did not question the excessively high utility demand projections and Staff did not consider the option to maximize far less expensive and less harmful alternatives to the utility proposal, which are always demand reduction through water efficiency and conservation. There was also no assessment of the potential of an accelerated leak reduction program, despite high leak rates.

Since the 2015 decision, the Commission has *rubber stamped* one utility proposal after another. Even the most common sense policy modifications and improvements to utility proposals are rejected by Staff, despite expert testimony proposing more effective modifications. In many of the rate cases, not a single comma in the joint proposal was changed, despite extensive public participation, and expert testimony or comment.

WATER PLANNING EXPERTISE

Over the course of seven rate cases and other proceedings, we have come to question whether Staff has *the specialized water expertise* needed to assess the utility proposals. In the proceeding in which the initial request to develop desalination was approved, we were not able to identify one staffer with technical expertise in water supply planning or water conservation. We see the same in more recent cases.

It appears to us that this possible lack of specialized expertise leads to Staff reliance on the expertise of the private utility. The private utility does have expertise, but the utility is also beholden to shareholders' interests. Their financial interests are sometimes directly counter to those of the ratepayers. For example, the utility profits at a much higher rate of return from major capital projects like desalination than from conservation.

This over-reliance by Staff on the expertise of utilities is combined with a culture of mistrust and dismissiveness toward independent experts and hostility toward non-utility stakeholders.

In addition, in Suez and Veolia proceedings, Staff has also told us verbally on several occasions that they do not review best practices elsewhere, they do not research the issues

[2] See *Order Establishing Rate Plan,* Case 16-W-0130, Public Service Commission, January 24, 2017.

themselves, and they do not confer with other state agencies that might have more technical expertise on specific issues. We have been told by Staff that they review only the

materials filed within the rate case.

This kind of insular approach -without the benefit of reviewing best practices elsewhere or conferring with other state agencies with subject matter expertise - can ultimately lead to bad planning, like the desalination proposal, leaving the ratepayers to pay off tens of millions of dollars spent needlessly by the utility.

Added to this is the lack of *independently* established program performance metrics. In our experience, Staff has rejected expert comment suggesting more appropriate metrics and instead has always accepted the metrics proposed by the company, which reward specific company programs rather than measuring the impact on the actual problems[3].

THE PUBLIC SERVICE COMMISSION SHOULD SET RATES, NOT DETERMINE WATER POLICY

With its rigidly delineated timeline and limited Staff water expertise, a rate case is not the right process for sound water planning.

Independent experts have recommended that the entire process through which major water policy proposals are developed and approved needs restructuring.

I urge the legislature to consider the kind of multi-agency restructuring of water policy that is recommended by Prof. Dan Van Abs, former Director of Watershed Planning for NJ public water supply. Prof. Van Abs' recommendations are attached to these comments.

Prof. Van Abs recommends that the New York State Department of Environmental Conservation (NYS DEC) should be the lead agency in water planning, following New Jersey's approach. Oversight by DEC would build on that agency's expertise in watershed planning, water quality protection, and water conservation and could lead to a more holistic and more efficient approach to planning, helping to keep rates affordable.

The role of the Commission should be to set rates.

[3] See attached *Recommendations for Water Supply Conservation and Efficiency Requirements in New York State,* Prepared by Daniel J. Van Abs, PhD, AICP, Associate Professor of Practice for Water, Society and Environment School of Environmental and Biological Sciences, Rutgers - The State University of New Jersey, Department of Human Ecology, Prepared for the Rockland Water Coalition, June 2020. Filed in Case 19-W-0168, p. 37-38

In these comments, filed in Veolia Rate Case 19-W-0168[4], Prof. Dan Van Abs, former Director of Watershed Programs for the New Jersey Water Supply Authority, identified these structural

problems,

> The NYSPSC as an agency does not have the statutory missions of NYSDEC (for water withdrawal evaluations and watershed or aquifer conditions) or the NYSDOH (regarding drinking water quality and its protection). **Individual utilities are therefore tasked with planning in the absence of a broader perspective, substituting their judgement for that of state agencies with public trust responsibilities.**
>
> …t**he NYSPSC is left to address utility specific rate cases that can have profound water supply implications without the support of a regional analysis that incorporates the existing or projected needs of all relevant utilities, watershed and aquifer protection, and wastewater discharge locations.**
>
> More generally, in the absence of a broader planning and management framework, the Public Service Commission is reacting to individual rate cases without sufficient context for effective regional resource management.
>
> The NYSDPS and NYSPSC should not be in a position of deciding how environmental resources should be allocated; their primary function should be in ensuring that utilities achieve what they are required to achieve by other agencies in the most cost-effective manner.

Prof. Van Abs recommended that,

> New York State should move to **a more structured, multi-agency approach to regional water resources management that draws on the strengths of each agency to avoid and, where necessary, mitigate and eliminate excessive stresses on water supply resources necessary to the sustainability of communities, economies and environmental resources.**
>
> **The essential concept here is that individual regulatory, capital project and management decisions should be based upon a sound understanding of regional water supply and watershed conditions, existing and future demands and stresses,**

[4]*Recommendations for Water Supply Conservation and Efficiency Requirements in New York State,* Prepared by Daniel J. Van Abs, PhD, AICP, Associate Professor of Practice for Water, Society and Environment School of Environmental and Biological Sciences, Rutgers - The State University of New Jersey, Department of Human Ecology, Prepared for the Rockland Water Coalition, June 2020. Filed in Case 19-W-0168, p. 5-6 and p. 10-11 Bolding and italics are mine.

> **and options for ensuring that water demands do not outstrip availability. *The***

regional planning is first, and specific decisions follow.

> Existing New York State statutes (primarily in the Environmental Conservation Law) could provide the framework for a solid system of water supply planning and management based on principles of watershed management, water conservation and water use efficiency. **However, many of the statewide and regional planning components are not being used, forcing reliance on individual permit decisions to address regional issues**.

Every ten years, the New Jersey Department of Environmental Protection (DEP) develops a statewide, comprehensive Water Management Plan[5], which assesses water quantity and water quality and projects demand and environmental challenges, such as the impact of climate change. This larger overview guides individual policy decisions.

With this ten year reevaluation, NJ DEP assesses and oversees the challenges in a more holistic way. New York State lacks such a Water Management Plan and should institute such a process. It makes sense for NYS DEC to oversee this process.

In fact, in 1984 New York created a Water Resources Planning Council charged with developing and supervising a Water Resources Management Strategy for the State, and more targeted strategies for sub-state regions, including the Delaware/Lower Hudson Region covering Rockland County and other areas. Yet after the new Water Resources Planning Council developed the new water supply strategies the law called for, the DEC let the process die by the early 1990s. The Legislature should take steps to push DEC to re-activate this Council and begin updating water supply strategies for regions of the state, beginning with regions where limited water sources and water scarcity risks are higher priorities[67].

SOUND WATER PLANNING & CLIMATE MITIGATION COULD SIGNIFICANTLY CUT COSTS FOR RATEPAYERS & TAXPAYERS

Despite the key role of the Commission in implementation of the Climate Leadership and Community Protection Act (CLCPA), Staff seems to lack a strong commitment to implement

[5] See the *2024 New Jersey Statewide Water Supply Plan* at https://dep.nj.gov/water-supply-plan/ [6] See attached article, "Water Stress in New York State: The Regional Imperative", by Sorrell Negro and Keith Porter, *Journal of Water Law*, 2009

[7] See also "Water Conservation and Long-term Water Supply Planning in the Hudson Valley: A Rockland County Case Study" https://www.newpaltz.edu/media/the-benjamin-center/brief_7_rockland_water.pdf 6

these mandates for water utilities. Despite a recent order requiring resilience planning for

electric utilities[8], the Commission is not currently holding *water utilities* clearly accountable for their emissions or for resilience planning in rate cases[9].

In terms of climate mitigation, the energy used by a water utility can be significant - in addition to the high energy use by wastewater treatment. The energy used by water supply and by wastewater treatment could be reduced significantly by both energy efficiency and by water conservation and efficiency.

According to the EPA[10]:

> For many municipal governments, drinking water and wastewater plants typically are the largest energy consumers, often accounting for 30 to 40 percent of total energy consumed. Overall, drinking water and wastewater systems account for approximately 2 percent of energy use in the United States, adding over 45 million tons of greenhouse gases annually.
>
> By incorporating energy efficiency practices into their water and wastewater plants, municipalities and utilities can save 15 to 30 percent, saving thousands of dollars with payback periods of only a few months to a few years.
>
> and
>
> As much as 40 percent of operating costs for drinking water systems can be for energy.
>
> Energy costs often make up 25 to 30 percent of a utility's total operation and maintenance (O&M) costs. **They also represent the largest controllable cost of providing water and wastewater services**.

As with the recommendations of Prof. Van Abs cited above, that a larger, coherent framework must inform and guide the specific policy decisions, here too, the process should start with a larger vision on climate change and water, a coherent plan that will guide the individual decisions.

Again, NYS DEC is clearly the agency best suited to lead this process.

[8] https://dps.ny.gov/news/psc-approves-utility-climate-change-resilience-plans [9]In Case 21-G-0309/21-G-0310 **Staff took the position that the Climate Act does not apply to rate cases**. Staff does not appear to be reviewing utility filings to determine that they are part of a coherent, workable, or least-cost plan to achieve needed emission reductions consistent with the CLCPA's statewide mandates. Consequently, the Commission is greenlighting billions of dollars of investments to be recovered from ratepayers that may be inconsistent with achievement of CLCPA mandates.

[10] https://www.epa.gov/sustainable-water-infrastructure/energy-efficiency-water-utilities 7

Moving to climate resilience, one of the key findings on water of the New York State Climate

Impacts Assessment is that "Long-term water infrastructure resilience requires proactive incorporation of changing climate conditions into planning and design."

This NYS Assessment and the excellent New Jersey Statewide Water Supply Plan[11] both detail key climate risks for water supply, including the emergence of more frequent flash droughts and the probability of more severe longer-term droughts, more intense precipitation leading to insufficient aquifer recharge due to increased runoff, increased occurrence of harmful algal blooms which can cause serious human health risks, as well as potential threats to drinking water availability, increased potential for pathogens, increased potential for leaks in water mains, increased evaporative loss, resulting potential decrease in water availability, saltwater intrusion, and increased peak demand for water.

The absence of climate policy for water supply can have especially significant consequences for a community with *already stressed water supplies,* such as in Rockland County or areas of Long Island. The American Water Works Association (AWWA), the leading trade organization for water utilities, is advising that the impacts of climate on water quantity and quality may be complex and profound.

According to the AWWA,

> **…no other factor impacts the utility operations in a complex, uncertain, and overwhelming way like climate change does**…In the face of uncertainty and the **exponential increase in the frequency of extreme events**, it seems prudent for utilities to understand the impacts of climate change and their system **vulnerabilities** and **develop a CAP {Climate Action Plan} to stay prepared and resilient.**[12]

Despite these potentially profound impacts of climate change on both our drinking water quantity and quality, in Veolia Case 23-W-0111[13], Staff had *no plans* to require either climate mitigation or adaptation and Veolia stated that such plans were not needed. Staff had to be pressured by intervenors to require mitigation of emissions and future comments on climate vulnerability - not a full assessment. The final result deferred most action for at least four years - and included no specific metrics.

The lack of proactive response to climate change can also significantly impact rates. For example, Veolia Water New York is already experiencing an increase in the growth of algae in the major reservoir which provides about 30% of Rockland's drinking water. The lack of a

[11] 2024 New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Conservation, p. 32-63

12 Climate Action Plans— Adaptive Management Strategies for Utilities, American Water Works Association, 2021

[13] Case 23-W-0111

proactive approach leads to increased expenses for chemicals to treat the water - and decreased water quality.

FAILURE OF OVERSIGHT ON PFAS FILTRATION COSTS

The same failure of Staff to look beyond the four corners of the utility filing was seen in the failure of Staff in Case 23-W-0111 to adequately review the charges resulting from filtration of PFAS in drinking water supplies. The company did not look into the availability of federal funding that could have offset some of the $66.5 million in cost burden on ratepayers incurred to date for filtration.

Staff was *not aware* of available federal funding for these costs for private utilities until a ratepayer persistently brought it to their attention in the rate case. **Note that ultimately the costs of filtration for PFAS for Rockland County alone are likely to substantially exceed $100 million, due to the need to filter 31 more wells, due to regulations of PFAS chemicals newly finalized by the EPA.**

The failure of Staff to do its own research **beyond the statements from the utility** ultimately leaves ratepayers to pay off the full costs.

OBSTACLES TO PUBLIC PARTICIPATION

I fully support the comments and recommendations of PULP regarding obstacles to public participation and transparency.

Problems Rockland ratepayers have directly experienced as intervenors include:

- Most proceedings are in person only, requiring lengthy travel, which is both unreasonable and unnecessary in 2025. The in person requirement nearly ensures that only the utility and lobbyists in Albany will be able to participate.
- The rules and procedures for rate cases are not publicly posted, making it unnecessarily difficult for the public or its representatives to participate.
- Public notifications are not in plain English.
- The filing system for materials and reports is unnecessarily arcane, with postings to a string of cases, some of them dating back decades. .
- The settlement process greatly exacerbates the already extreme power imbalance between the utilities and stakeholders and their experts and representatives. ● Utilities overuse confidentiality in the settlement process, apparently in order to hide information.

LEGISLATIVE SOLUTIONS

Here are some of the legislative solutions that I hope this Committee will consider:

- Consider a major restructuring of the water planning process to establish a multi-agency process for water planning, with NYS DEC as the agency in charge of water planning, similar to the process in New Jersey. The role of the Commission would be to set rates, not to approve water policies.
- Establish a hierarchy of water supply options to align water policy with New York State climate goals. Give preference to water supply options that maximize least energy intensive water efficiency and conservation practices and proactive watershed planning to protect the water supply.
  - The Legislature should take steps to direct DEC to re-activate the Water Resources Council or a regional planning process. DEC should begin by updating water supply strategies where limited water sources and water scarcity risks are higher priorities.
- Best water practices in other states, that will ultimately help to keep rates affordable, should inform water planning decisions.
- Direct the Commission (or DEC) to establish independently established performance metrics for all utility programs.
- Pass legislation with clear and specific legislative mandates to the Commission on implementation of the CLCPA. Require water utilities to maximize cost effective energy and water conservation and to plan now for climate resilience for water supplies. Legislation should be passed to require climate vulnerability assessments and resilience plans for water supplies.
- Direct the Commission to establish a larger agency process such as the Reforming Energy Vision process of 2014 (REV), open to public participation, to establish new goals and guidelines as we enter a period of serious disruption by climate change. The larger vision and guidelines should then guide decisions in individual rate cases and policy proceedings.
- I want to thank the Senate for legislation creating the Independent Office of the Utility Consumer Advocate, with the hope that it will cover climate, energy, and water, not only rates. I urge the Governor to sign this legislation into law.
- I endorse the comments of Irene Weiser of Fossil Free Tompkins, filed here, regarding the reform or abolition of the settlement process. It is difficult to see how the extreme power imbalance between the utility and all others can be meaningfully altered by minor reforms.
- Direct the agency to address numerous other obstacles to participation: ○ Open up all hearings to *participation*, not only viewing, by remote access.

    - Expand intervenor funding to water cases, make the application process less onerous for intervenors, and increase the funding.
    - Set a maximum of three years for the length of rate plans. Four years is too long to wait for reappraisal of policies.
    - Direct the agency to set specific timelines for responses to petitions and motions.
    - Direct the agency to prominently post all rules for proceedings online in plain English and in Spanish.
    - Restructure the filing system for cases or index and list all of the cases in one central place, including those with earlier company names.
- Consider legislation to limit the excessive permitted ROE for major capital projects. Excessive Return on Equity (ROE) helps incentivize new projects and construction, even when they may be directly counter to the interests of the ratepayer. The desalination proposal for Rockland is a perfect example, an instance in which the least expensive options for ratepayers were neglected for the most expensive water source, which promised a much higher ROE.

CONCLUSIONS

Historically, the Commission and its staff have been a rate-making agency. Suddenly we are in a moment at which there is great uncertainty about the magnitude and rapidity of longer-term changes in the climate and what effects might emerge suddenly.

In the face of mandates to address climate impacts and other new challenges, the Commission is tasked with deciding some of the most critical issues facing the state on climate, energy, and water. Indeed, in the case of water policy, the Commission has made water planning decisions for many decades.

Climate change will exacerbate the underlying problems by further stressing water systems that are already stressed.**The old role of the agency is no longer adequate to the tasks before us. These changes to the role of the Commission do not appear to have been thoroughly incorporated throughout the Department of Public Service, on which the Commission relies.**

We need clear mandates on climate to the agency from the state legislature, and bold leadership and vision from the Commission regarding all utilities. We need the kind of re-orientation and re-envisioning that was started with the Reforming Energy Vision REV in

2014.

However, ultimately, the Department of Public Service is not equipped to oversee water planning.

Rockland's desalination story is a cautionary tale. When regulatory oversight is inadequate, it is the ratepayers who pay the price. A major restructuring of the oversight of water utilities is needed to ensure adequate and affordable water supply - and to ensure that we are prepared for the uncertain challenges ahead.

The legislature must also pass legislation that explicitly directs the Commission to incorporate the mandates of the Climate Act into all aspects of its work, so that we can meet the profound challenges of the 21st century.