STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NARRAGANSETT BAY COMMISSION :
GENERAL RATE FILING : DOCKET NO. 3483

REPORT AND ORDER

On November 29, 2002, the Narragansett Bay Commission ("NBC") filed an application with the Rhode Island Public Utilities Commission ("Commission") seeking a general rate increase of its existing rate schedule to become effective on December 29, 2002. The proposed rates were designed to generate total revenues of $58,277,461, and if approved as filed, would increase NBC's present revenues by $13,826,248 or 31.1%. The Commission suspended the effective date of the proposed rate increase.

The instant rate case filing represents NBC's third rate filing in the last three years. These three rate filings were necessitated primarily by the costs of the Combined Sewer Overflow Abatement Program ("CSO"). The following provides a brief history:

DOCKET NO.	FILING DATE	INCREASE REQUESTED	INCREASE ALLOWED	AUTHORIZED REVENUE
3162	6/29/00	$10,089,441	$6,669,489	$36,632,209
3409	12/21/01	$ 8,834,420	$8,834,420	$45,467,359
3483	11/29/02	$13,826,248		

I. NBC

In support of its filing, NBC filed testimony by Ray Marshall, Walter Edge, Joseph Pratt, Thomas Brueckner, Maureen Gurghigian, Karen Grande, Anthony Simeone, and Juan Mariscal. In his pre-filed testimony, Mr. Marshall, Deputy Director of NBC, discussed the objectives of this filing. He noted that this increase is driven by the debt service required to fund NBC's Capital Improvement Program ("CIP"). Mr. Marshall indicated that the current costs reflected in the CIP from FY 2004 to FY 2008 are estimates. He stated that the two most expensive projects in the CIP are Phase I of the CSO Project and improvements to the Bucklin Point Wastewater Treatment Facility. Mr. Marshall stated that NBC has received $4,150,400 in federal grants during the last two fiscal years. Also, he noted that NBC receives a subsidized loan rate from the Rhode Island Clean Water Finance Agency ("RICWFA"). In addition, he indicated that NBC was seeking an increase from 241 authorized positions in Docket No. 3162 to 254 authorized positions in this filing. Of these 13 additional positions, he noted that 6 relate to construction management activities reimbursed through capital funds and the other positions consist of 4 positions for the STAR program, a security guard, and 2 other positions to support the accounting and finance functions needed to support the capital program. With the rate increase as filed, NBC's average residential bill would be the sixth lowest in the state and the sixteenth lowest among twenty-seven cities nationwide.[1]

In his pre-filed testimony, Walter Edge, a CPA and outside consultant, discussed NBC's test year and rate year. Mr. Edge used the year ending June 30, 2002 as the test year and made various normalization adjustments to it.[2] For the rate year ending fiscal year June 30, 2004, Mr. Edge first reviewed the revenue accounts and adjusted them to reflect the $8,834,240 increase allowed in Docket No. 3409.[3] Next, Mr. Edge reviewed expense accounts. For payroll, Mr. Edge increased the amount by $844,702 over the adjusted test year amount of $10,330,378 based on 250 positions, not including the 4 new STAR positions. He included no turnover allowance. Mr. Edge noted that the filing includes 254 full time positions, an increase of 13 positions over the 241 that were approved in Docket No. 3162. Six of these thirteen new positions were added to the

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[1] NBC Ex. 6 (Marshall's direct testimony), pp. 3-12.
[2] NBC Ex. 1 (Edge's direct testimony), pp. 8-11.

capital program and are not charged to operations and will end when the Bucklin Point capital program ends. Mr. Edge increased the health insurance expense by $699,695 over the adjusted test year amount of $1,566,185.[4] In regards to other expense accounts, Mr. Edge reduced the sludge loading/disposal account by $155,106, but increased the trash grit removal by $95,955. Mr. Edge did not adjust the bad debt expense, but he did increase the insurance by $170,264. In addition, Mr. Edge increased the equipment maintenance agreements by $108,309, but decreased rental-outside property by $178,580. Also, Mr. Edge reduced two gas cost accounts by the net amount of $86,724, but increased the electric expense account by $379,870. Furthermore, Mr. Edge increased the management/audit services account by $311,324 and included the cost of the STAR program, which is an increase of $308,242. Mr. Edge increased the capital outlays by $741,134 but noted that these capital items are offset by the carry forward of funds for the prior year debt coverage revenue.[5]

Next, Mr. Edge discussed the two approaches to debt service: Variable Rate Bonds in Tax Exempt Commercial Paper ("TECP") or Open Market Bonds ("OMB"). Mr. Edge noted that RICWA's loan capacity is limited and it will not be able to loan NBC more than $60 million annually over the next two years, thereby leaving a $25 million gap per year over the next five years. To address this problem, NBC recommended the TECP approach, which would require the Commission to approve "automatic increases" with annual true-ups and compliance filings. Mr. Edge explained that TECP is a short-term financing vehicle with very attractive variable rates which could be paid off as more State Revolving Fund ("SRF") borrowing becomes available.

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[3] Id., pp. 12-15.
[4] Id., pp. 16-17.

TECP is also less costly than the OMB program. Mr. Edge also noted that the TECP Program would allow the Commission to either approve a two year average increase of 21.6 percent or a 9 percent increase in the first year and a 20.7 percent increase in the second year. Mr. Edge recommended the two-year average TECP approach. Also, Mr. Edge noted that the debt service coverage requirement is 125 percent of principal and interest on all debt, and that any surplus debt coverage from prior years would be used for pay-as-you-go capital programs. Mr. Edge stated that the revenue increase would be implemented on an across-the-board basis that would result in a 31.6% increase to all rates.[6]

In his pre-filed testimony, Joseph Pratt, Vice-President of Louis Berger Group, Inc., updated the status of NBC's CSO project. The CSO project consists of 15 separate projects: 12 construction projects plus the program management project, the drop shaft land acquisition project, and the Owner Controlled Insurance Program ("OCIP"). Mr. Pratt indicated that three projects have been substantially completed: the Floatable Control Demonstration Facility, the Moshassuck River Interceptor facilities and the DOT Land Acquisition. Mr. Pratt stated that the Main Spine Tunnel, the single largest component of the CSO project, began in February 2002. He also noted that the Construction of Overflow 004/061 Facilities project and the Foundry Shaft Site Demolition project have begun. Furthermore, Mr. Pratt stated that contract for the Construction of Overflow 006/007 Facilities has been awarded while the Construction of the Woonasquatucket River Interceptor Facilities is scheduled to be put out to bid.[7]

[5] Id., pp. 17-24.
[6] Id., pp. 25-32.
[7] NBC Ex. 9 (Pratt's direct testimony), pp. 2-5.

Mr. Pratt stated there have been relatively few problems with the CSO project. He noted that the contractor for the Moshassuck River Interceptor Facilities experienced difficulties drilling a drop shaft and has submitted a claim that NBC is contesting. Also, Mr. Pratt stated that the contractor for the Main Spine Tunnel contract had difficulty obtaining a completely frozen ring for the initial ground support and therefore has stated that a Differing Site Condition exists at the main work shaft.[8]

Additionally, Mr. Pratt stated that the current cost estimate for the construction of the CSO project Phase I is $283,774,000 including management and insurance costs. This is higher than the $275 million estimate in Docket No. 3409 because four more contracts have been bid and the cost estimates for the remaining contracts have been updated. Specifically, Mr. Pratt noted that the contract for Overflows, originally estimated at $9.9 million, was split into two independent contracts due to complexity resulting in a total bid price of $16,290,444 or an increase of $6.4 million. In conclusion, Mr. Pratt discussed how the Louis Berger Group has weekly management meetings, tracks change orders and has established a Dispute Resolution Board.[9]

In his pre-filed testimony, Thomas Brueckner, the Engineering Manager of NBC, discussed various other CIP projects relating to Bucklin Point facility. Mr. Brueckner stated that the final design for Bucklin Point will increase treatment capacity to 116 million gallons per day ("mgd"). The total cost of this upgrade is $75.8 million, of which, $15.7 million has been spent to date for design and construction. Also, Mr. Brueckner stated that DEM may tighten nitrogen standards for treatment facilities. If DEM only requires seasonal removal of nitrogen then this can be accomplished with

[8] Id., pp. 5-6.
[9] Id., pp. 6-9.

existing aeration tanks at Field's Point; however, if year-round nitrogen removal is required then the cost would increase from $13 million to $36.4 million. In addition, Mr. Brueckner discussed the need for the Floatable Control project within the next two phases of the CSO project is completed.[10]

Maureen Gurghigian, Senior Vice President with First Southwest Company, has served as financial advisor to the NBC on its debt offerings for the past 12 years. Her testimony explained the capital financing alternatives available to NBC. She noted that the State Revolving Loan Fund ("SRF") administered by the Rhode Island Clean Water Finance Agency ("RICWFA") is NBC's primary source of funding for its capital program. The SRF is the least costly source of capital as its interest rate is based on a subsidized rate that is 2/3rd of the market rate and the interest free rate passed by referendum in 2000. Under the blended rate program, NBC is guaranteed a minimum of $140 million in loans. Ms. Gurghigian indicated that from fiscal years 2003 to 2007 NBC's CIP has an average annual need of $85 million but that RICWFA can only lend $60 million annually. The funding gap is even more significant in the early years when NBC's cash flow needs are approximately $100 million a year. Ms. Gurghigian stated that NBC has two options: Open Market (revenue) bonds ("OMB") or a Variable Rate Debt Obligation ("VRDO") program that would incorporate the use of Tax Exempt Commercial Paper ("TECP"). She indicated that OMB is more expensive than borrowing through SRF but that NBC would be able to lock in interest rates close to their lowest level in 40 years. However, she also noted that OMB will require NBC to borrow significantly more than it needs in the short term.[11]

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[10] NBC Ex. 7 (Brueckner's direct testimony), pp. 2-9.
[11] NBC Ex. 5 (Gurhigian's direct testimony), pp. 4-6.

Ms. Gurghigian explained that TECP involves the issuance of short-term debt instruments which will be replaced once long-term SRF loans become available. She explained that TECP is low cost, is less expensive than OMB, and would not require borrowing more money than is needed for actual cash flow so as to allow NBC to maximize its ability to use SRF. However, Ms. Gurghigian noted that the interest rates of TECP could significantly increase. She also indicated that there would be some initial costs to establish the TECP program, and investors must be confident that the Commission will authorize rates that are sufficient to cover the interest and principal costs of the TECP. Ms. Gurghigian testified that in order to establish a TECP program large enough for the CSO project, investors and credit facility providers must know that NBC will have the ability to pay down the interest and principal that covers the entire TECP program that is anticipated to be needed for Phase I of the CSO project. She stated that NBC would need the PUC to authorize "automatic" rate increases for the TECP program to be successful. Lastly, Ms. Gurghigian informed the Commission that NBC has an A+ rating from S & P.[12]

In her pre-filed testimony, Karen Grande, bond counsel for NBC, discussed the differences of borrowing from RICWFA, or through OMB, or TECP. Ms. Grande stated that the RICWFA program limits the length of loans to 20 years, while OMB or TECP can be extended to 50 years. Also, prepayment for SRF loans is only allowed with RICWFA approval, while prepayment is allowed for TECP, and a redemption premium is required for OMB. In addition, a trust indenture is not required for RICWFA but is required for both OMB and TECP. Ms. Grande discussed the various funds established pursuant to a trust indenture, and stated that a trust indenture would require a 125% debt

[12] Id., pp. 7-12.

service coverage ratio and the establishment of a liquidity facility.[13] Ms. Grande also testified that it was critical to the marketability of the variable rate securities that the lenders of the money know that NBC will receive "automatic rate increases" in the future.

In his pre-filed testimony, Anthony Simeone, RICWFA's Executive Director, stated that the financing needs of NBC and other borrowers has increased over the last few years and historically low interest rates have adversely impacted RICWFA's investment income. Mr. Simeone stated that NBC is entitled to $83 million in blended rate loans over the next two years and anticipated that RICWFA will be able to lend $60 million a year for the next two years.[14]

In his pre-filed testimony, Juan Mariscal, NBC's Director of the Planning, Policy and Regulation Division, discussed the NBC's proposed Sampling, Testing and Analysis of Rivers Project ("STAR"). Mr. Mariscal explained that NBC's Environmental Monitoring and Data Analysis Section ("EMDA") samples and monitors the quality of water in urban rivers and the Narragansett Bay. Over the past two years EMDA has been monitoring concentrations of nutrients, metals, and other critical water quality parameters in the Providence and Seekonk Rivers. During the last three calendar years, the number of samples collected by NBC has ranged from 14,786 to approximately 18,000. NBC received a grant from the EPA and funding from SRF to begin the STAR project. Mr. Mariscal indicated that in rate year 2004 the STAR project will not be funded through the EPA or SRF and therefore, NBC was requesting $308,242 in costs, of which, $218,388 is for personnel costs. These personnel costs are for four new positions: Assistant Manager,

[13] NBC Ex. 4 (Grande's direct testimony), pp. 2-7.
[14] NBC Ex. 3 (Simeone's direct testimony), pp. 2-4.

Environmental Scientist, Monitoring Technician, and Chemist. Mr. Mariscal stated that the data collected by the STAR project will assist NBC in determining the permit levels mandated by state and federal agencies. However, Mr. Mariscal stated that NBC has not considered any alternative to the STAR project because all aspects of the STAR project are required by NBC's Rhode Island Pollution Discharge Elimination System ("RIPDES") permits.[15]

II. DIVISION

On March 5, 2003, the Division of Public Utilities and Carriers ("Division") filed testimony by Thomas Catlin, David Stearns, and Alberico Mancini. In his pre-filed testimony, Mr. Catlin, an outside consultant, recommended a rate increase of $7,326,745 for an overall revenue requirement of $51,777,958. Regarding employee levels, Mr. Catlin noted that NBC requested 250 employees, not including the 4 additional employees for the STAR program. However, Mr. Catlin noted that during 2002 NBC averaged only 238 to 243 employees, and had 242 to 243 employees during the last quarter of 2002, which includes the employees out on long-term workers compensation. Mr. Catlin set the employee level for NBC at 243. Since the average rate year salary per employee is $44,732, he reduced the salaries and wages by $313,126 and reduced payroll related expenses by $120,026. Regarding workers compensation, Mr. Catlin noted that NBC recently resolved two old workers' compensation claims and therefore, he reduced the rate year expense by $102,662. Also, Mr. Catlin applied a $20,000 grant received by NBC as an offset to personnel cost rate year expenses.[16]

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[15] NBC Ex. 8 (Mariscal's direct testimony), pp. 2-18.
[16] Div. Ex. 1 (Catlin's direct testimony), pp. 4-8.

For other expenses, Mr. Catlin normalized the sludge disposal costs at Field's Point over a three year period, thereby reducing sludge disposal costs by $13,686. Regarding bad debt expenses, Mr. Catlin stated that the level of bad debt expense in the test year was not representative of normal levels, and therefore he reduced this expense by $86,109 for a normalized rate year level of $120,000. For management/audit services, Mr. Catlin reduced rate year expenses by $13,333 by normalizing the costs of a $20,000 job assessment study over three years. Also, he reduced the fee paid to U.S. Filter for operating Bucklin Point by $17,665. In addition, Mr. Catlin eliminated $290,000 from the rate year expense because the Commission is not pursuing a separate storm water rate at the present time.[17] In total, Mr. Catlin reduced management/audit expenses by $320,998. Also, Mr. Catlin adopted Mr. Stearns' testimony and reduced electric power costs by $221,289 to $2,063,341.[18]

In the area of debt service, Mr. Catlin noted that RICWFA does not have sufficient funds for NBC and therefore, NBC will need to use OMB or TECP. NBC had filed a rate increase based on the use of OMB but had recommended using TECP because of its lower costs. Mr. Catlin stated that if TECP is used then the Commission will need to allow rates to be automatically adjusted in subsequent years. Mr. Catlin recommended the use of TECP because it will reduce costs and maintain flexibility. If more RICWFA funds become available or if OMB becomes more attractive, then NBC can switch from TECP. When the rates are adjusted for TECP, Mr. Catlin recommended that NBC should file a compliance filing to true-up any variances between actual borrowings and prior

[17] The Commission closed Docket No. 3432, which investigated the implementation of a storm water run-off rate. The Commission determined that it would not pursue a storm water run off rate at this time because it would shift costs to non-profit entities in Providence such as hospitals.
[18] Div. Ex. 1, pp. 8-11, 16.

projections, and that only changes in the amount of principal, the timing of borrowings and interest rates would be permitted. Also, any revenue increase should be implemented by a uniform percentage increase in all rates. Furthermore, Mr. Catlin recommended requiring NBC to file a general rate case no later than the beginning of fiscal year 2007. In addition, Mr. Catlin adjusted the annual interest costs for TECP to recognize that the funds borrowed will be drawn down over the course of the year. As a result, Mr. Catlin reduced the debt service costs by $3,614,896 and the coverage requirements by $1,206,748.[19]

Regarding the operating reserve, Mr. Catlin noted that historically, NBC has been permitted to have a 1.5 percent operating reserve so as to cushion against unforeseen expenses or lost revenue. Mr. Catlin adjusted the reserve allowance by excluding debt service and the associated debt service coverage requirement. Instead, Mr. Catlin based the operating reserve allowance on 1.5 percent of O&M expenses and amortization expense. Accordingly, Mr. Catlin reduced the operating reserve by $479,964. Lastly, Mr. Catlin indicated that the revenue increase should be applied in a uniform percentage increase to rates of 16.76 percent.[20]

In his pre-filed testimony, David Stearns, a Public Utilities Analyst for the Division, discussed NBC's electricity expense. Mr. Stearns stated that NBC had incorrectly calculated its electricity expense because NBC did not correctly apply credits from its competitive energy supplier for placing NBC on Last Resort Service. Mr.

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[19] Id., pp. 11-16.
[20] Id., pp. 17-20.

Stearns' calculation indicated that NBC's electricity rate year expense should be reduced by $221,289 from $2,284,630 to $2,063,341.[21]

In his pre-fled testimony, Mr. Mancini, a Public Utilities Engineering Specialist for the Division, discussed the CSO project and the improvements to Bucklin Point. Mr. Mancini stated that he attends weekly progress meetings of the CSO project so as to be informed of construction problems, design changes, delays or change orders. He also indicated that he files quarterly reports regarding the CSO project. Mr. Mancini explained that to date some contracts have been awarded above the engineer's estimates while other contracts have been awarded below the engineer's estimate. In Docket No. 3409, NBC indicated that the CSO project's final construction cost estimate was $275 million. The five contracts awarded in the last year have resulted in a 3 percent increase in the total construction cost estimate. Also, Mr. Mancini stated that to date all approved change orders have resulted in a net decrease in costs from the original contract bids.[22]

Mr. Mancini noted that the most recent construction cost estimate for Phase I of the CSO project is $281,751,638, which includes management costs, insurance costs, the actual costs for two contracts, the actual bids for four contracts, approved change orders, and estimates for the six remaining contracts. Mr. Mancini noted that in addition, there will be an estimated $5.7 million of capitalized in-house costs and land costs for all of Phase I of the CSO project. Also, Mr. Mancini argued that Project 302.5 entitled Floatable Control Demonstration Facility should not be included in Phase I of the CSO project because DEM required its installation in Phase II and Phase III of the CSO project. In regards to Bucklin Point, Mr. Mancini stated that the construction contract

[21] Div. Ex. 3 (Stearns' direct testimony), pp. 2-4.
[22] Div. Ex. 5 (Mancini's direct testimony), pp. 2-4.

was awarded in March 2002 to J.L. Marshall & Sons, the lowest qualified bidder. The original contract was $58,549,001, but as a result of change orders, it was decreased to $58,201,697. Approximately 35 percent of the construction at Bucklin Point has been completed.[23]

III. NBC'S REBUTTAL

On March 20, 2003, Mr. Edge submitted rebuttal testimony for NBC. For employee levels and payroll related expense, Mr. Edge indicated that NBC budgeted for more positions in fiscal year 2003 than it requested in this rate filing and in fact, NBC has employed 252 individuals and has 257.8 positions in NBC's 2003 operating budget. Mr. Edge stated he would "accept Mr. Catlin's use of seven positions in the turn-over calculation and apply it to the 252.8" positions. He then stated the "turnover allowance is 4.2 positions less than the number of positions requested in my initial filing" and "accepted 60% of Mr. Catlin's turnover allowance". After subtracting the turnover allowance and the positions reimbursed from capital funds, Mr. Edge sought funding for 245.8 positions plus the four STAR positions. This resulted in a decrease in salaries of $187,974 and a payroll tax reduction of $72,016. Regarding bad debt expense, Mr. Edge reiterated his original position of $206,109. He indicated that his original position was actually understated and that NBC has had $136,479 of bad debt expense through March of fiscal year 2003. In the area of electricity, Mr. Edge adopted a two-year average of the delivery cost resulting in a $170,492 reduction. Mr. Edge accepted the other adjustments made by Mr. Catlin in his direct testimony.[24]

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[23] Id., pp. 4-7.
[24] NBC Ex. 2 (Edge's rebuttal testimony), pp. 2-7.

IV. DIVISION'S SURREBUTTAL

On March 28, 2003, the Division submitted the surrebuttal testimony of Mr. Catlin and Mr. Stearns. Addressing bad debt expense, Mr. Catlin argued that it should be based on a historical average and noted that NBC expected to have bad debt in excess of $120,000 per year. Mr. Catlin also noted that recent information indicates that bad debt expenses have stabilized and therefore, he proposed a bad debt allowance of $160,000. He accepted Mr. Edge's position regarding employee levels. He also incorporated Mr. Stearns' revised recommendation regarding electricity costs. Accordingly, Mr. Catlin recommended an increase of $7,571,833 and a total cost of service of $52,025,046.[25] In his surrebuttal testimony, Mr. Stearns adopted Mr. Edge's two-year average but made some revisions. As a result, Mr. Stearns recommended a $22,594 reduction in electricity costs proposed in NBC's rebuttal.[26]

V. HEARINGS

Following notice, public hearings for the purpose of taking public comment were conducted. After public notice, evidentiary hearings were conducted at the offices of the Commission at 89 Jefferson Boulevard, Warwick, Rhode Island on April 29 and 30, 2003. The following appearances were entered:

FOR NBC:	Peter McGinn, Esq. Steven Richard, Esq.
FOR THE DIVISION:	Leo Wold, Esq. Special Assistant Attorney General
FOR THE A.G.[27]	William Lueker, Esq. Special Assistant Attorney General

[25] Div. Ex. 2 (Catlin's surrebuttal testimony), pp. 2-4.
[26] Div. Ex. 4 (Stearn's surrebuttal testimony), pp. 1-3.
[27] There was no objection to the Attorney General's motion to intervene.

FOR THE COMMISSION: Steven Frias, Esq.
Executive Counsel

NBC presented Mr. Edge in support of its position. Under cross-examination by the Attorney General, Mr. Edge indicated that approval of the TECP program would still require NBC to file public notice of any future increase under Title 39. Also, Mr. Edge indicated that NBC's 241 authorized employees is only "the number used to calculate the revenue requirement" and that NBC "can hire additional employees if you have additional revenue to pay for them" and "you can hire additional employees if you don't have to come in for a rate increase."[28] Also, Mr. Edge indicated that once the Bucklin Point CIP project ends the need for six positions relating to this project would be terminated.[29] Under cross-examination by the Commission, Mr. Edge indicated that he agreed to Mr. Catlin's revenue requirement in his surrebuttal testimony.

Mr. Catlin, on behalf of the Division, joined Mr. Edge to testify regarding the revenue requirement. Mr. Catlin indicated that the Commission would approve the increases required by the TECP program but that the Commission would ensure that the costs were prudently incurred by NBC. Mr. Edge agreed with Mr. Catlin's viewpoint.[30] Mr. Edge indicated that NBC would cooperate with the Commission in providing a 60-day notice before making a compliance filing under the TECP program for a rate change. Also, Mr. Edge stated that NBC would comply with reasonable reporting requirements associated with the TECP program.[31]

NBC presented Ms. Gurghigian, Ms. Grande and Mr. Simeone as witnesses to discuss the TECP program and the SRF. Ms. Gurghigian stated that TECP short-term

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[28] Tr. 4/29/03, pp. 36, 39.
[29] Id., pp. 52, 54-55.
[30] Id., pp. 67-69.

debt interest rates are approximately 1 percent and that interest rates for SRF loans are slightly below 2 percent. NBC's counsel indicated that he would provide appropriate language regarding Commission approval of the TECP program[32]

Mr. Marshall testified on behalf of NBC. Mr. Marshall was cross-examined regarding NBC's additional employee positions created since Docket No. 3162, such as an unarmed security guard. Also, Mr. Marshall was asked questions regarding the vehicles owned and utilized by NBC.[33]

On the next day of the hearings, NBC presented Mr. Brueckner as a witness. Mr. Brueckner discussed the CIP project relating to Bucklin Point. NBC next presented Mr. Mariscal as a witness to testify as to the need for the four new STAR positions. Under cross-examination by the Commission, Mr. Mariscal stated that the STAR program started with a federal grant for which $150,000 was used to contract with URI faculty and staff to do the work that these four new STAR positions would be performing.[34] He indicated that prior to the STAR program testing and monitoring for water quality was performed by NBC in house and via a contract with URI.[35] Mr. Mariscal agreed that in 2000, prior to the beginning of the STAR program in fiscal year 2001, NBC had performed nearly 15,000 samplings. Mr. Mariscal indicated that even without funding for these new STAR positions, NBC would continue to complete any mandates required by law. Also, Mr. Mariscal admitted that NBC had not performed a cost benefit analysis to determine if it was more affordable to hire outside consultants rather than to create

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[31] Id., pp. 73-75.
[32] Id., pp. 129, 133, 139.
[33] Id., pp. 175-179, 185-194.
[34] Tr. 4/30/03, pp. 62-68.
[35] Id., pp. 69, 75, 82.

four new positions.[36] Under cross-examination by the Commission, Mr. Catlin, on behalf of the Division, stated that the four new STAR positions were included in his revenue requirement based on the testimony of Mr. Mariscal and that he had not reviewed any cost benefit analysis regarding these four new positions. Mr. Catlin indicated he approved of these four new positions based on his "experience in dealing with NBC" and "that they are well managed".[37]

Mr. Pratt testified on behalf of NBC. Under cross-examination by the Commission, Mr. Pratt indicated that Phase I of the CSO project has 11 contracts, of which, 6 bids are completed and 2 contracts completed. The foundry site demolition contract was completed under budget. For the MRI contract, the project was completed slightly under budget but the contractor is seeking approximately $1 million additional dollars. Mr. Pratt stated that this dispute may be litigated. Regarding the main spine tunnel contract, Mr. Pratt stated that a "differing site condition" has been raised but that it would not cause the contract costs to exceed the ten percent contingency. He also indicated that this issue would go to the Dispute Resolution Board and be resolved within a year.[38] Ms. Giebink testified on behalf of NBC to discuss the CSO reports filed with the Commission. She indicated that the construction costs for Phase I of the CSO Project is $283,774,000, and when the 10 percent contingency is included along with land and NBC staff costs, it is $313,096,000. Also, if the total Phase I CSO design cost is included, then the Phase I cost totals $328 million.

The Division presented Mr. Mancini as a witness. Mr. Mancini estimated the construction costs of the CSO Project Phase I to be $282,276,842 and noted that nearly

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[36] Id., pp. 111-112, 118-119.
[37] Id., pp., 136-137, 139.

75 percent of the total construction costs had already been awarded in contracts. Mr. Mancini also noted that NBC has allocated an additional $1.4 million to the Louis Berger Group management contract because the City of Providence is requesting that NBC pay it for fire safety equipment, but NBC is contesting this request and has not paid the City of Providence.[39]

VI. POST-HEARING BRIEFS

On June 6, 2003, NBC filed a post-hearing brief. NBC argued that current Commission approval of the VRDO/TECP program would bind future Commissions in regards to approving debt service insured through the VRDO/TECP program. Also, NBC indicated that future compliance filings for the VRDO/TECP program would comply with the 30-day notice requirements of R.I.G.L. Section 39-3-11. In addition, NBC filed proposed language indicating that: the Commission approved the VRDO/TECP program for fiscal years 2004-2008 and that NBC will provide 60-day notice of any rate increase due to the VRDO/TECP program to ensure that the filing is accurate and the costs of the projects being financed are prudently incurred.[40]

On June 6, 2003, the Commission staff issued a data request regarding proposed language, filing and reporting requirements for the VRDO/TECP program. On June 17, 2003, NBC filed a response providing proposed language indicating that NBC is authorized to fund projects outlined in the CIP for fiscal years 2004 to 2008 through VRDO/TECP program, and that it can use the VRDO/TECP program to fund CIP projects not currently listed if it does not exceed $500,000. Also, NBC would be authorized to obtain revenue increases due to the VRDO/TECP program but not to

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[38] Id., pp. 193-186, 195-200.
[39] Id., pp. 224-226.

exceed a revenue increase of $25 million over the next 6 years. Also, in its compliance filing NBC agreed to reporting requirements relating to debt service and debt coverage and 30 day notice of any rate increase.[41]

On June 25, 2003, the Division filed a response to NBC's proposed language relative the VRDO/TECP program. The Division said that the Commission is not pre-approving specific rate increases if it approves the VRDO/TECP program. Instead, NBC will file compliance filings seeking rate increases so as to true up variances between actual borrowings and prior projections. Also, the Commission would be indicating that the VRDO/TECP approach of financing the CIP is a prudent method of financing. The Commission could however find a cost to be imprudent. The Division did not agree with an overall $25 million limit for increases due to the TECP program. Also, the Division recommended that the TECP program can be used to fund new CIP projects if the new project does not exceed $300,000. Lastly, the Division requested that compliance filings be made at least 60 days before their effective date.[42]

On June 23, 2003, the Attorney General filed a post-hearing brief. First, the Attorney General stated that R.I.G.L. Section 39-3-11 prohibits this Commission from approving future rate increases at this time thus binding future Commissions. Also, the Attorney General noted that Chapter 25 of Title 46 provides security to potential creditors of NBC. The Attorney General emphasized that the Commission cannot currently approve future rate increases. Instead, the Attorney General argued that NBC must file for future rate increases and justify every rate increase to the Commission.[43]

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[40] NBC's Post-Hearing Brief
[41] NBC's Data Response of 6/17/03.
[42] Division's letter dated 6/25/03.
[43] A.G.'s brief, pp. 1-12.

Second, the Attorney General called for closer scrutiny of NBC's expenses in five areas. In the first area, the Attorney General argued that NBC was unclear as to how much the Floatable Control Facilities project would cost noting that NBC's estimates ranged from $600,000 to $15,000,000. In the second area, the Attorney General indicated that it was unclear if $2,000,000 was necessary for the Blackstone Valley Interceptor project. In the third area, the Attorney General questioned the need for $1.4 million for the City of Providence to buy fire equipment. In the fourth area, the Attorney General questioned the exclusive use of a motor vehicle, namely, a Grand Cherokee driven by NBC's Executive Director. In the fifth area, the Attorney General recommended the Commission review the ratio between technicians and supervisors at NBC.

On June 25, 2003, the Commission made a request of the Attorney General seeking further clarification of his arguments. On June 26, 2003, the Attorney General responded. In regards to the VRDO/TECP program, the Attorney General indicated the Commission can approve the VRDO/TECP program as long as any resulting rate increase is not implemented until the Commission has satisfied R.I.G.L. Section 39-3-11, which requires a substantive review, a hearing, and that the Commission retain its discretion over the rate increase. In regards to the five areas needing further scrutiny, the Attorney General recommended the following actions: eliminate from NBC's revenue requirement $14.4 million relating to the Floatable Control Facilities project; eliminate from NBC's revenue requirement $2 million relating to the Blackstone Valley Interceptor project; eliminate from NBC's revenue requirement $1.4 million relating to the City of Providence fire equipment; eliminate from NBC's revenue requirement $30,000 relating to Grand Jeep Cherokee; and reduce from personnel costs the requested STAR program supervisory position.[44]

On June 26, 2003, NBC filed a reply brief to the Attorney General's brief. NBC indicated that the Attorney General did not offer a reasonable alternative to the VRDO/TECP program. NBC noted that the Commission has ongoing oversight and review of NBC's rates as well as the requirements of compliance filings for future rate increases.[45]

In regards to the Attorney General's other areas of concern, NBC indicated that the $17.5 million estimate for the Floatable Control Facilities project is appropriate because NBC cannot be determine the exact amount because DEM has not decided what requirements it will impose on NBC. At this time, the CIP appears to list the project at $4.5 million. As for the Blackstone Valley Interceptor project, NBC estimated it would cost $1 million per year and noted that NBC's sewer system is old and sometimes in need of repair. Addressing the fire equipment issue, NBC noted that negotiations are ongoing with the City of Providence regarding the cost. Additionally, NBC noted that the equipment is for emergency medical services. As for the Executive Director's Grand Cherokee, NBC argued that there is no evidence that Mr. Pinault uses his vehicle for personal use. Lastly, as to the ratio between technicians and supervisors, NBC argued that the Attorney General's comment was "unintelligible".[46]

VII. DATA RESPONSES

On June 2, 2003, the Commission issued data requests to the Division regarding various potential adjustments to the Division's surrebuttal position. On June 12, 2003,

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[44] Id., pp. 12-16.
[45] NBC's Reply Brief, pp. 1-3.

the Division indicated that it is a matter of the Commission's discretion whether to reduce NBC's operating reserve from 1.5 percent to 1 percent.[47] On June 17, 2003, the Commission issued additional data requests to the Division requesting that the Division compute an NBC revenue requirement with a 1 percent operating reserve, exclusion of the personnel costs relating to the four new STAR positions, and 243 positions as provided in Mr. Catlin's direct testimony. On June 25, 2003, the Division responded that these adjustments would reduce NBC's revenue increase to $7,047,965.[48]

VIII. OPEN MEETINGS AND MOTION FOR RECONSIDERATION

At an open meeting on June 30, 2003, the Commission reviewed the evidence and legal arguments. The Commission approved the Division's surrebuttal position with adjustments and approved the TECP program with appropriate regulatory language. The Commission made three adjustments to the Division's position: (1) a reduction in the number of employees funded to 243 (along with an appropriate adjustment to payroll taxes); (2) elimination of the four positions in the STAR program; and (3) a reduction in the operating reserve from 1 ½ % to 1%. These adjustments result in a revenue increase of $7,047,965 and a cost of service of $51,499,178.[49]

The Commission also continues to restrict three accounts: debt service--$21,909,88, debt service coverage reserve--$6,094,072, and PUC oversight funds--$150,000. The PUC oversight funds will be funded from the debt service coverage reserve. Also, NBC is directed to set aside in a restricted account the funding outlined herein or such other amounts allotted in these accounts in any subsequent rate increases

[46] Id., pp. 3-9.
[47] Division's data response dated 6/12/03.
[48] PUC Ex. 2 (Div. data response dated 6/25/03).
[49] The approved cost of service is incorporated as Appendix A to this Report and Order.

to approve additional funding for the VRDO/TECP program. The restricted funds shall only be used for their designated purposes and excess/available funds shall be invested in an interest bearing account. The debt service coverage reserve funds may be used for capital outlays (as outlined in this docket) and for payment of the CIP projects.

On July 14, 2003, NBC filed a motion for reconsideration with the Commission. In support of its motion, it submitted pre-filed testimony of Walter Edge. In its motion, NBC indicated that as of June 30, 2003, NBC had filled 256 FTE positions. Also, NBC noted that in May 2003 that it received notice that its health care insurance rates will be 4.77 percent higher than was estimated in the rate filing. In addition, NBC requested that its operating reserve be set at 1.5 percent instead of 1 percent. Accordingly, NBC requested an increase of $7,714,690 be approved instead of the $7,047,965 approved by the Commission at its open meeting on June 30, 2003.[50]

On July 23, 2003, the Division responded to NBC's motion by opposing and supporting, in part, NBC's motion for reconsideration. The Division supported a rate increase of $7,571,833 instead of $7,714,690. The Division noted that NBC was not requesting the additional four employees for the STAR program but was seeking 250 employees. The Division maintained that NBC was entitled to only 249.8 employees, or 245.8 FTE positions and the additional four STAR employees. Also, the Division opposed raising rates due to the increase in health care expenses but did support increasing the operating reserve from 1 percent to 1.5 percent.

On July 22, 2003, the Attorney General sought clarification of the Commission's open meeting decision regarding certain CIP projects and opposed NBC's motion for reconsideration because it did not meet the standard of Commission Rule 1.26. The

Attorney General requested clarification as to whether the Commission approved in rates $13 million for floatable controls and whether the Commission approved $2 million for relining about 3,000 feet of the Blackstone Valley Interceptor. The Attorney General stated that NBC should utilize its management skills in having more employees than was approved by the Commission. Also, the Attorney General noted that NBC failed to timely notify the Commission of the health care rate increase in May 2003. Lastly, the Attorney General indicated that NBC was merely restating its argument for a 1.5 percent operating reserve.[51] At an open meeting on August 5, 2003, the Commission reviewed the pleadings and the evidence. A majority of the Commission did not approve any portion of NBC's motion for reconsideration. Accordingly, the motion was not approved.

COMMISSION FINDINGS

I. DIVISION'S SURREBUTTAL POSITION

At the April 29, 2003 hearing, NBC accepted the Division's surrebuttal position, which provided for a $7,571,833 increase and the adoption of the VRDO/TECP program. The Attorney General raised concerns regarding the VRDO/TECP program and other various aspects of NBC's revenue requirement. On June 30, 2003, the Commission approved the Division's surrebuttal position with three adjustments: a reduction in employees funded to 243; elimination of the four positions in the STAR program; and a reduction in the operating reserve from 1.5 percent to 1 percent. The result is a $7,047,965 revenue increase for a total cost of service of $51,499,178. The Commission also approved the VRDO/TECP program with appropriate regulatory language.

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[50] NBC's Motion for Reconsideration and the testimony of Mr. Edge.

[51] Attorney General's response to NBC's motion for consideration.

II. VRDO/TECP PROGRAM

NBC presented two financing approaches to fund debt service for its CIP program: OMB and VRDO/TECP. Based on the evidence presented, the VRDO/TECP program will very likely result in lower interest rates and provide a more flexible approach to debt financing. In contrast, OMB would preclude NBC from obtaining more SRF financing if it becomes available and would also have higher interest rates than current interest rates available through the VRDO/TECP program. Although OMB would have the advantage of locking in lower, long-term interest rates, the Commission finds that the benefits of flexibility and lower short-term rates will provide greater benefit to the ratepayers. If interest rates were to dramatically increase the Commission could always indicate to NBC that it should consider utilizing OMB prospectively.

The Commission is aware that the approval of the VRDO/TECP program will necessitate future rate increases. Neither the Commission nor any party can predict exactly how much these rate increases will be in light of such variables as interest rates or the costs for various projects in the CIP program. However, these rate increases could be mitigated if the Commission were to determine that other areas in NBC's cost of service could be reduced.

Accordingly, the Commission approves the VRDO/TECP program and finds it to be a prudent method of financing debt. NBC is authorized to use the VRDO/TECP to finance its CIP program for fiscal years 2004 to 2008 as listed in the filing in this docket. NBC must obtain Commission approval to use VRDO/TECP for any new capital improvement project for which its estimated project cost exceeds $300,000. To obtain Commission approval of any future rate increase under the VRDO/TECP program, NBC must make compliance filings. NBC must file a notice for the rate increase proposed in these compliance filings at least sixty days prior to its effective date and comply with the requirements of R.I.G.L. Section 39-3-11 so as to give the Commission adequate time to ensure the accuracy of the proposed rate increase and conduct any prudence review it may wish to undertake at that time.

These proposed rate increases in the compliance filings will only be for VRDO/TECP debt service and debt service coverage for CIP projects. As part of these compliance filings, NBC must file: (1) a revised limited cost of service schedule reflecting the changes to the revenue and expense accounts affected by the VRDO/TECP program; (2) testimony and schedules in support of the debt service, and debt service coverage proposed as well as current and projected annual debt service payment schedules; (3) a summary of funds currently available for the CIP program and the projected funding needed for the rate year period; (4) a summary of funding received from RICWFA, including funds requested, received, the interest rate, and repayment schedules; (5) a summary of how prior years' debt service coverage funds were utilized; (6) a calculation of new rates based on a uniform percentage increase to rates; and (7) a showing of compliance with prior Commission orders and the requirements of Section 2.11 of the Commission's Rule of Practice and Procedure.

III. ATTORNEY GENERAL'S COMMENTS RELTING TO THE CIP

In regards to the Attorney General's comments and request for clarification regarding NBC's CIP, the Commission notes at the outset that all funds for the CIP are in a restricted account. Therefore, any unused funds in the CIP would be used for other CIP projects. Also, the Commission has required NBC to obtain Commission approval of any new CIP projects over $300,000 prior to expenditure. Accordingly, in all likelihood, any unused capital funds for Floatable Controls or the Blackstone Valley Interceptor projects will go to the CIP projects already approved by the Commission. As for the Floatable Controls project, NBC indicated that the CIP appears to list the project at $4.5 million, which is substantially below the $17 million referenced by the Attorney General. Also, NBC cannot accurately estimate the cost of the Floatable Controls project because DEM has not decided what requirements to impose on NBC. In regards to the Blackstone Valley Interceptor project, NBC estimated it would cost approximately $1 million per year. This amount is a reasonable estimate because NBC has an old system that is in need of repairs. If such a problem arises, NBC should not have to await Commission approval of its filing to obtain appropriate funds.

IV. STAR POSITIONS

NBC requested $308,242 to fund the STAR program, including $218,388 for personnel costs related to four new positions. At the outset, the Commission emphasizes that the burden of proof for requesting additional employment positions and raising rates is on the utility.[52] In support of its request for the STAR program, NBC relied on the testimony of Mr. Mariscal. Mr. Mariscal admitted that NBC had not performed any cost benefit analysis to determine if it is more affordable to hire an outside consultant rather than creating four new positions to perform the testing and monitoring for water sampling for the STAR program. This is very troublesome because Mr. Mariscal acknowledged that prior to the creation of the STAR program, NBC performed all testing and monitoring for water quality in house or via contract with URI. In fact, in 2000, prior to the beginning of the STAR program in fiscal year 2001, NBC had performed nearly

15,000 samplings. Also, the STAR program began with a federal grant of $150,000, which was used to contract with URI facility and staff. In contrast, NBC is seeking approximately $300,000 annually to fund the STAR program.

Testing and monitoring the Providence and Seekonk Rivers is a legitimate task for NBC to perform. However, NBC has not shown that the hiring of four additional employees is necessary to perform this task. Alternative and more affordable means could be available to NBC. NBC could retain URI faculty, staff or students to perform these tasks, or it could have current NBC employees perform some of these tasks as they have done in the past. The Commission will not approve the $218,388 in personnel costs for the STAR program. The Commission will approve the remaining $89,854 for capital outlays and O& M or to help pay consultants, URI staff or students to assist NBC staff in performing testing and monitoring.

V. NUMBER OF FTE POSITIONS

As discussed earlier, NBC has the burden of proof in seeking a rate increase by increasing its number of FTEs. In January 2001, in Docket No. 3162, the Commission established NBC's revenue requirement based on 241 FTE positions. In this case, NBC originally requested 250 FTE positions. The Division's original position was 243 FTE positions, based on a NBC turnover allowance of 7 FTE positions. In its rebuttal testimony, NBC accepted funding for a 245.8 FTE positions, not including the 4 STAR program positions. The Division accepted NBC's rebuttal position. However, this Commission will not.

Mr. Edge's rebuttal testimony was very confusing. At one point, Mr. Edge stated that he would use seven positions in the turn-over calculation and apply it to 252.8

[52] R.I.G.L. Section 39-3-12.

positions. This is inappropriate. A utility should not use its rebuttal testimony as an attempt to increase the number of FTE positions over its original proposal; otherwise regulators are presented with a moving target. However, Mr. Edge also stated NBC accepted the Division's turnover allowance of 4.2 FTE positions or 60 percent of Mr. Catlin's turnover allowance and applied it to 250 FTE positions. But, Mr. Edge never explained why only 60 percent of Mr. Catlin's turnover allowance was acceptable. This is also not appropriate. It appears that NBC wanted 245.8 FTE positions and that it attempted to devise various methodologies to justify it. These confusing, inappropriate, contradictory approaches are not persuasive. The Commission will not accept this slight of hand by NBC.

The number of 243 FTE positions is reasonable. First, during the test year July 1, 2001 to June 30, 2002, NBC's number of filled FTE positions ranged from 229 to 244. Second, during the last two quarters of 2002, NBC only filed 243 FTE positions on average, despite NBC's contention that it had budgeted 257.8 FTE positions.[53]

NBC argued that it has and will have more than 243 FTE positions during the rate year. This may be true, but NBC must still demonstrate why these additional positions are justified. Anticipated increases in payroll expenses are not part of the test year and therefore, can be excluded from the proposed rate year.[54] NBC can budget and fill as many positions as it desires, but it is this Commission that decides how many positions are to be funded by ratepayers. Simply because a utility decides to create more positions does not mean that this Commission is required to automatically approve a rate increase to fund these positions. For instance, the California Supreme Court upheld the California

[53] Div. Ex. 6 (Data Response 1-11).

Public Utilities Commission ("CAPUC") when it disallowed $2,150,000 in salaries from the test year because the CAPUC found "no reason" for the increase in compensation or the number of personnel.[55] The utility must justify these new positions and explain why funding is in the public interest. Furthermore, an expense can be disallowed if it is excessive in relation to the resulting benefit to the ratepayers or in relation to an alternative means of providing that benefit.

In this case, NBC has proposed thirteen new positions. Six of these thirteen positions are not charged to operations. No adequate justification has been given for these additional positions. In part, some of these positions do not appear to be a reasonable use of ratepayer funds. The most blatant example is NBC's new security guard position. In the "aftermath of September 11, 2001", NBC hired a security guard to protect it as a potential terrorist target. This security guard is unarmed and has "no formal security guard training". Interestingly, however, this untrained and unarmed NBC security guard checks the "grounds for litter", reports "icy areas of parking etc", handles interoffice "mail delivery", provides transportation "for employees to and from meetings where parking is a problem", and handles the task known as to "run errands". With NBC residential ratepayers likely to see their rates double by 2009 in order to pay for just Phase I of the CSO project, the Commission must do all it can to scrutinize NBC's costs to ensure rates are just and reasonable.

If NBC wants to retain its unarmed, untrained security guard, it can do so but its revenue requirement will be based on 243 FTE positions. NBC can prioritize which positions are the most important to fund. Also, NBC can use its revenues for personnel

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[54] In re Brooklyn Union Gas Co., 17 PUR 4th 451 (NY 1976), In re Southwest Bell Tel. Co., 74 PUR 4th 624 (Okla. 1986).

costs creatively. NBC can create part-time positions or consolidate positions. Furthermore, NBC could use the approved revenue requirement for 243 FTE positions to fund 250 FTE positions if NBC were to reduce its current personnel costs by reducing salaries, restructuring pension benefits, or by requiring employees to pay for a portion of their health coverage. NBC has many options in relation to its personnel costs. But, the one option this Commission will not accept is to simply allow NBC to hire as many employees as it wants with whatever salary and benefit package NBC deems appropriate and to have NBC expect this Commission to rubber stamp a rate increase to fund these additional positions. It is NBC's prerogative to hire whomever they choose, but it is the Commission's duty only to approve reasonable rates in the public interest.

VI. OPERATING RESERVE

In its rebuttal testimony, NBC accepted the Division's proposal for an operating reserve of 1.5 percent of NBC's non-debt service costs, or $384,901. In response to a Commission data request, NBC indicated that "to reduce the reserve to less than $250,000 would be adding unnecessary risk to the NBC operations".[56] From this response, it appears that a reduction in the operating reserve to an amount slightly above $250,000 would not create unnecessary risk to NBC. In response to a Commission data request, the Division indicated that a reduction in the operating reserve to one percent "is a matter of Commission judgment" and that an operating reserve is designed to "address unanticipated fluctuations in expenses and revenues."[57] It is clear that NBC is not entitled to an operating reserve and that the Commission can establish the funding level of such a reserve. In this proceeding, the Commission has noted that the number of

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[55] Pacific Tel v. PUC, 401. P.2d 353, 377 (CA 1965).
[56] PUC Ex. 1, Response 17.

employees NBC has hired is in excess of the approved 241. It is possible that NBC's operating reserve in the past has been too generous. A reduction in NBC's operating reserve to one percent of non-debt costs would still maintain the operating reserve above \$250,000. This amount of funds should be adequate to address unanticipated fluctuations without giving NBC excessive funds to engage in an expansive hiring program at ratepayers expense.

VII. NBC'S MOTION FOR RECONSIDERATION

Although NBC entitled its pleading as a motion for reconsideration, it would be more appropriate to consider it a motion to reopen proceedings under Commission Rule 1.26 because NBC is requesting the Commission to change its decision before the Commission issues its written order. Under Commission Rule 1.26, NBC must set forth facts claimed to constitute grounds requiring the reopening of the proceedings and set forth a "material change of fact" that "occurred since the conclusion of the hearing". NBC failed to satisfy its burden under Commission Rule 1.26.

First, the representation by NBC that it has filled 256 FTE positions does not constitute a material change of fact. NBC had already filled many of these positions by February 2003. Also, in reliance of this representation, the Division increased the number of FTE positions to 245.8 in its surrebuttal testimony. The Commission was aware that NBC had probably hired more personnel than 243 when it approved funding for 243 positions. Furthermore, the fact that NBC has hired more than 243 positions is not material in demonstrating that these additional employees are necessary. Lastly, it is pure hubris on the part of NBC to hire personnel in advance of obtaining Commission

[57] Division data response dated 6/12/03, No. 2.

approval to include these additional costs in rates. If NBC must terminate these additional employees, it must blame itself.

Second, the increase in NBC's health care insurance will not be treated as a material change of fact. NBC became aware of the health care rate increase in May 2003 and yet did not seek to submit this evidence to the Commission until after the June 30, 2003 open meeting. Presumably, if this health care rate increase was truly a material change of fact to NBC, NBC would have sought the appropriate relief from the Commission in May 2003.

Third, NBC offered no new facts in support of its position that it should have a 1.5 percent operating reserve. Instead, NBC simply argued that it wants and therefore should have a 1.5 percent operating reserve. Simply wanting more money is not a persuasive argument.

Accordingly, NBC's motion for reconsideration is not approved. The facts and arguments presented by NBC did not persuade the Commission that the rates it approved on June 30, 2003 were unreasonable.[58]

NBC may be disappointed because the Commission will not approve higher rates so NBC can hire more employees such as the untrained and unarmed security guard. NBC may have an expectation that the Commission would approve higher rates to satisfy its expanding payroll. But, NBC is mistaken. NBC has the burden to justify that its payroll expenses are not excessive and will benefit ratepayers. NBC provided no such justification. NBC ratepayers are expected to have their rates double by end of this

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[58] On August 20, 2003, NBC filed compliance tariffs reflecting the Commission's June 30, 2003 open meeting decision. On August 22, 2003, the Division filed a memorandum stating that the filed tariff complied with the Commission's June 30, 2003 open meeting decision. Accordingly, the Commission approved NBC's compliance tariffs at an open meeting on August 22, 2003.

decade due to pay for the CSO Project Phase I. At a minimum, NBC ratepayers should not be expected to pay more for NBC's operating expenses than is clearly necessary and to the benefit of the ratepayers. The ratepayers and the public interest are served if a utility's payroll expenses are scrutinized and kept at a reasonable level. NBC's approach of hiring additional employees and then expecting this Commission to automatically raise rates for a growing payroll does not necessarily serve the best interest of the ratepayers or the public interest.

Accordingly, it is

(17558) ORDERED:

1. Narragansett Bay Commission's rate application of November 29, 2002 is hereby denied and dismissed.

2. A revenue increase of $7,047,965 resulting in a cost of service of $51,499,178 for the Narragansett Bay Commission is hereby approved for effect June 30, 2003.

3. The funding provided for debt service, debt service coverage and oversight for CSO project shall continue to be kept in restricted accounts.

4. All compliance filings seeking a rate increase under the TECP/VRDO program shall: (1) be filed no later than sixty days prior to its effective date; (2) be limited for debt service and debt service coverage for CIP projects; (3) contain a revised limited cost of service schedule reflecting the changes to the revenue and expense accounts affected by the VRDO/TECP program; (4) contain testimony and schedules in

support of the debt service, and debt service coverage proposed as well as current and projected annual debt service payment schedules; (5) contain a summary of funds currently available for the CIP program and the projected funding needed for the rate year period; (6) contain a summary of funding received from RICWFA, including funds requested, received, the interest rate, and repayment schedules; (7) contain a summary of how prior years' debt service coverage funds were utilized; (8) contain a calculation of new rates based on a uniform percentage increase to rates; and (9) contain a showing of compliance with prior Commission orders and the requirements of Section 2.11 of the Commission's Rule of Practice and Procedure.

5. Narragansett Bay Commission's motion for reconsideration is not approved.

6. Narragansett Bay Commission shall comply with all other findings and instructions contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND, PURSUANT TO OPEN MEETING DECISIONS ON JUNE 30, 2003 AND AUGUST 5, 2003. WRITTEN ORDER ISSUED SEPTEMBER 12, 2003.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman*

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner

*Chairman Germani dissents from the portion of this Report and Order establishing a 1 percent operating reserve instead of a 1.5 percent operating reserve.

Appendix A

Narragansett Bay Commission
Docket 3483
Cost of Service

	Company Position	Commission Adjustments	Proforma
REVENUES			
User Fee Revenues	$ 41,672,033	$ --	$ 41,672,033
Other Service Revenues	2,038,980		2,038,980
Miscellaneous	740,200		740,200
Total Revenues	$ 44,451,213	$ --	$ 44,451,213
EXPENSES			
Personnel Services	14,503,907	(391,651)	14,112,256
Operating Supplies &Exp	8,895,644		8,895,644
Special Services	2,250,853		2,250,853
Amortization	9,690		9,690
Debt Service	21,909,888		21,909,888
Carry Forward from 2003	(2,025,910)		(2,025,910)
Debt Coverage	6,094,072		6,094,072
Total Expenses	$ 51,638,144	($ 391,651)	$ 51,246,493
OPERATING RESERVE	384,901	(132,216)	252,685
COST OF SERVICE	$ 52,023,046	($ 523,868)	$ 51,499,178
REVENUE INCREASE	$ 7,571,833	($ 523,868)	$ 7,047,965