

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: CITY OF NEWPORT WATER :
DIVISION APPLICATION TO : DOCKET NO. 3578
CHANGE RATE SCHEDULES :

**ORDER REGARDING NEWPORT WATER'S NOVEMBER 15, 2004
COMPLIANCE FILING AND *INITIAL* DECISION REGARDING MOTION FOR
RELIEF FROM ORDER 17992 *PENDING FURTHER INVESTIGATION***

On November 15, 2004, the City of Newport, Utilities Department, Water Division ("Newport Water"), submitted a Compliance Filing, with a matrix which indicated that, since the issuance of Order No. 17992, it has complied with each reporting requirement on a timely basis. Accordingly, Newport Water requested Commission approval to repay the first \$500,000 installment of the loan made by the City of Newport ("City") prior to the rate case in Docket No. 3578.

In a separate filing, Newport Water filed a Motion for Relief from Order No. 17992, requesting a transfer of \$317,955 from the "Restricted Repayment to City Account" to its checking account to cover a cash flow problem resulting from a debt service payment that was made in November 2004 out of the checking account, due to a shortfall in the debt service account. There is a dispute among the parties regarding the reason for that shortfall.¹ The Commission is treating that filing as separate from the Compliance Filing and has scheduled a hearing on the matter for January 25, 2005. However, because the Division's arguments combined the two issues, the Commission will address both in this Order, with further discussion following the January 25, 2005 hearing.

¹ Schedules incorporated into the Settlement approved by the Commission in Order No. 17992 indicated that there should have been no shortfall. Therefore, further investigation is needed. However, without the transfer of funds into the checking account, Newport Water would not have been able to pay certain bills.

At its December 17, 2004 Open Meeting, the Commission authorized the transfer of the \$317,955 from the "Restricted Repayment to City Account," to the checking account noting that the transfer puts the City's next repayment at risk. The Commission has required Newport Water to continue funding debt service at its required level and not to refund the "Restricted Repayment to City Account" until such time as it is clear there will be sufficient funds in the Debt Service Account to make the next required debt service payment. A full discussion of the issue will be contained in the order which will arise out of the further proceedings in this matter.

On December 16, 2004, the Division filed a Response to Newport Water's Motion for Relief from Order. This Response did not object to allowing Newport Water to transfer \$317,955 from the Restricted Repayment of the City Account to the Checking Account. However, the Division argued that rather than allowing repayment to the City of the first \$500,000, the Commission should deduct the \$317,955 from the first payment to the City, leaving only \$182,045 for the City pending further Commission investigation.²

On December 16, 2004, Newport Water filed a Reply to the Division's Response to Newport Water's Motion for Relief from Order, noting that the Motion for Relief and the Compliance filing are two separate matters for Commission consideration. For purposes of the Compliance Filing and related initial installment of repayment of the loan, all that the Commission should be reviewing is whether or not Newport Water complied with each filing requirement.³

² Division's Response to Newport Water's Motion for Relief from Order.

³ City of Newport's Reply to the Response of the Division to Newport Water's Motion for Relief from Order.

At its Open Meeting on December 17, 2004, the Commission approved Newport Water's Request with the caveat that, while Newport Water has complied with the letter of the Order in that it has provided documentation in the appropriate format on a timely basis, the filings have not necessarily been consistent. The accuracy of the reports has been questioned and several rounds of data requests were necessary to determine whether Newport Water was, indeed, maintaining accurate data. In fact, there are still some questions by the parties. Therefore, in six months, when the Commission reviews the next Compliance Filing and Request for Authorization, substantial compliance will mean that the numbers are accurate as well as properly formatted. Because of the Commission's decision regarding Newport Water's Motion for Relief from Order No. 17992, the second installment of \$500,000, scheduled to be made at the end of FY 2005, has been reduced by \$317,955. The \$317,955 will be repaid to the Repayment to City Account only after it is determined that there are sufficient funds in the Debt Service Account to make future Debt Service Payments. The City will be paid the second installment of \$500,000 in the event there is compliance and in the event Newport Water has been able to reimburse the Repayment to City Account in full.

In reaching its decision, the Commission noted that Newport Water has made an effort to comply with the Commission's reporting requirements. It appears from prior Commission Orders that Newport Water has never faced real consequences for non-compliance with Commission Orders. Newport Water finally appears to be taking the Commission's Orders seriously and the Commission views that as a positive first step. The data has been supplied in the proper format and in a timely manner. This has been accomplished and if Newport's past history is any indication, this was an important and

relatively big step. Second, the Commission will require accuracy without the need for data requests to confirm such accuracy, something that will be reviewed in the next Compliance Filing.

The Division argues that Newport Water should not be allowed to repay the entire amount because of apparent discrepancies raised by its Motion for Relief from Order. However, to do so would discourage the very goal the Commission was attempting to reach, namely, to have the utility maintain an open relationship with the Commission rather than waiting until it is in dire straits before advising the Commission. That is exactly what occurred when Newport Water realized it may not be able to meet its debt service payment. The Commission will not penalize the utility for its forthcoming approach to its problem by disallowing full repayment of the first installment of the loan which was based on reporting compliance.

Accordingly, it is hereby

(18121) ORDERED:

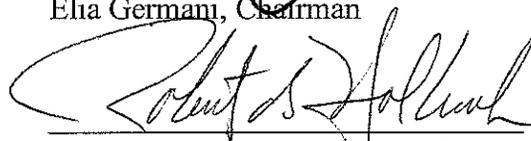
1. That the City of Newport, Utilities Department, Water Division is hereby authorized to transfer from the Restricted Repayment to City Account \$500,000 to the City of Newport, representing the first installment toward repayment of the loan made by the City of Newport to the Water Division addressed in Commission Order No. 17992.
2. That the City of Newport, Utilities Department, Water Division is hereby authorized to transfer from the Restricted Repayment to City Account \$317,955 to its Checking Account.

3. That the City of Newport, Utilities Department, Water Division shall continue to fund the Restricted Debt Service Account at its required level through March 31, 2005, at which time, it shall make a filing with the Commission to indicate whether it will be able to satisfy future debt service payments if it redirects the debt service funds into the Repayment to City Account.
4. The Commission will continue to investigate the issues raised by the City of Newport, Utilities Department, Water Division's Motion for Relief from Order No. 17922.
5. In accordance with the outstanding data request made at the December 17, 2004 Open Meeting, City of Newport, Utilities Department, Water Division shall provide a copy of the FY 2004 Management Letter from the City of Newport Audit as it relates to the City of Newport, Utilities Department, Water Division upon receipt by the utility.
6. The City of Newport, Utilities Department, Water Division shall comply with all other instructions contained in this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON DECEMBER 17, 2004. WRITTEN ORDER ISSUED JANUARY 11, 2005.

PUBLIC UTILITIES COMMISSION


Elia Germani, Chairman


Robert B. Holbrook, Commissioner

