

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

**IN RE: CITY OF WOONSOCKET WATER)
 DIVISION APPLICATION TO) **DOCKET NO. 3626**
 CHANGE RATE SCHEDULE)**

**POST-HEARING MEMORANDUM OF LAW OF THE DIVISION OF
PUBLIC UTILITIES AND CARRIERS**

I. INTRODUCTION

The Woonsocket Water Division (“WWD”) filed its rate application with the Public Utilities Commission (“Commission”) in July, 2004. Subsequent to the filing, the Division of Public Utilities and Carriers (“Division”) retained Andrea C. Crane, a member of the Columbia Group, to review WWD’s revenue requirements. After conducting an exhaustive investigation, the Division filed Direct and Surrebuttal Testimony with the Commission.

With the completion of the filing of the Division’s Surrebuttal Testimony, WWD and the Division were able to reach a consensus regarding many issues.¹ Despite the parties’ agreement in these areas, WWD decided to proceed to hearing. Overall, WWD seeks a 39.6% increase over present rate revenue. In its Surrebuttal Testimony and at hearing, the Division proposed a 28.7% rate increase. As will be seen, the Division has

¹ Attrition, Travel out of City, Education Training, State Pollution Monitoring Program, Regulatory Assessments, Conservation Services, Other Independent Service, Audit Service, Gas & Diesel Fuel, Cleaning & Housekeeping Supplies, Other Supplies, Clothing Allowance, Fiscal Certification, City Services Charge, Insurance – Vehicles, Insurance - Worker's Comp, Insurance – Liability, Insurance - Group Life, IFR, Temporary Labor, Out of Class Pay, Overtime Pay, Medical Buyback, Sick Leave Reimbursement, Comp Time Reimbursement, Non-sick/injury Bonus, Bonus for Course, Health Insurance, and Dental Insurance.

modified its surrebuttal and hearing position to reflect modifications to Operating Revenue, Light and Power Costs and Operating Reserve (ACC 2, 10 and 16 – Revised). The Division now recommends a 30.19% increase.² The difference between the parties' respective positions relates to the following areas: (A) Revenues, (B) Salaries and Wages and Other Wage Related Adjustments, (C) Maintenance of Roads and Walks, (D) Light and Power Contract, (E) Light and Power – Harris Pond, (F) Debt Service Reserve, (G) Property Taxes, (H) Legal and Engineering (Regionalization and Privatization), (I) Rate Case Expenses, and (J) Operating Reserve.

The Commission heard the merits of this matter on January 5 and 6, 2005. Testimony adduced at hearing, along with the application of appropriate legal and regulatory principles and policy, require findings that are in accord with the position proffered by the Division at hearing. The Division respectfully requests that the Commission grant WWD's rate application on such terms and conditions as are consistent with the schedules attached to this memorandum and with the Division's position presented at hearing as modified thereby.

II. THE DISPUTED ACCOUNTS

A. Revenues

The Division has updated its recommended adjustment to include the most recent three fiscal years as testified to by Ms. Crane at hearing (1/6/2005 Transcript at 12, lines 5-17). In addition, the Division's recommendation has been adjusted to eliminate all

² Schedules (ACC 1-16) summarizing the outstanding issues and the revenue requirements recommended by the Division are attached to this memorandum.

large customers (including mill fire customers—Consolidated Real Estate, Florence Drive LLC, and ACE Industries) that have left WWD’s system.

The Division, however, continues to recommend the use of a multi-year average (3 years) for determining WWD’s projected operating revenues, a methodology which has been adopted by the Commission in countless numbers of rate cases, and accounts for wide variations that occur due to weather and other factors. E.g., In Re: City of Newport Water Division Application to Change Rate Schedules, Docket 3578, Order 17992 (4 year average); In Re: Kent County Water Authority Application to Change Rate Schedule, Docket 2555, Order 15418 (4 year average). See also Rule 2.6(c) (requiring normalization of test year).

WWD, by contrast, continues to calculate its projected revenues based solely on test year sales, adjusted to remove revenues from businesses destroyed by the 2003 mill fire. The test year (the 12 months ending December, 2003) contained an abnormally wet, June, July and August. June was the third wettest June in 105 reported years; August was 12th wettest August in 105 years; and only 34 of 105 Julys were wetter than July of 2003 (Woodcock Rebuttal at 2). All other things being equal, water sales tend to increase in very dry weather (1/6/2005 Transcript at 91, lines 13-23). Accordingly, WWD’s water sales, no doubt, were abnormally low in the test year given the unusually inclement nature of the summer of 2003.

WWD based its projected operating revenues based on abnormal test year data and in complete disregard of the methodology adopted by the Commission for estimating operating revenues. The Commission should not countenance filings that contain projections that so radically conflict with the Commission’s Rules and accepted practice.

The Commission, therefore, should adopt the Division's recommendation regarding Operating Revenues as reflected in ACC-2 – Revised.

B. Salaries and Wages and Other Related Adjustments

The Division and WWD also disagree regarding WWD's claim for Salaries and Wages, as well as other related adjustments. The parties' disagreement is comprised of two components: (i) the proposed percentage annual increase for the second half of CY 2005, and (ii) adjustments to WWD's proposed Study Upgrade Costs, Longevity Costs and Payroll taxes.

Utilizing WWD's actual fiscal year 2004 salaries and wages (\$1,048,301), the Division recommended an increase for FY 2005 in salaries and wages based on the documented 3% figure contained in WWD's labor agreement. The Division then further adjusted the 3% figure to reflect one-half of an annual increase for the second half of 2005. WWD, thus, was afforded a 4.55% increase for its FY 2004 salaries and wages (Crane Direct at 11-12).

By contrast, WWD based its claim on its "labor agreement from 7-1-2002 through 6-30-05 and estimated increase for the second half of the rate year," which, according to the company, would be 4.0% (Woodcock Schedule 1.1 at 1). The labor agreement, however, contained base rate increases of only 3% annually, and WWD did not provide any documentation to corroborate the 4.0% estimate. WWD simply failed to meet its burden of proof with respect to this aspect of its salaries and wage expense claim.

WWD opines that the Commission "authorized" 33 employee positions, that it currently retains 33 employees, and that the utility will have to terminate one employee if the Division's recommendation is accepted. The Division believes WWD's line of

contention is legally flawed, and, in any event, is contrary to the overwhelming evidence on the record.

In recent dockets, the Commission has not authorized or directed utilities to employ a specific number of individuals. See In Re: Pawtucket Water Supply Bd. General Rate Filing, Docket 3497, Order 17574 at 49 (“Commission *is allowing funding* for only 65 employees”) (emphasis added). See also In Re: Woonsocket Water Division Abbreviated Rate Application, Docket 3512, Order 17594 (via settlement, Commission approved increase in funding for “Personnel Costs” without authorizing particular employee count).

It is believed that the Commission, in recent dockets, has proceeded more circumspectly in this regard due to recent Rhode Island Supreme Court caselaw that affords public utilities broad discretion in how they run their operations. See Providence Water Supply Bd. v. Public Utilities Commission, 708 A.2d 537, 543 (R.I. 1998) (while the PUC possessed authority to approve or to deny a rate increase to fund meter-reading system, it did not have authority to determine the best and most efficient way to modernize the system, absent evidence tending to prove the projected expenditures unreasonably and unjustly burden the ratepayer).

Instead, based on evidence that supports the claims presented, the Commission establishes rates that will generate sufficient revenues so that the utility can pay its reasonable expenses (*e.g.*, employ a sufficient number of individuals to run its operations). The utility is afforded broad discretion as to how most of its revenues must be allocated throughout the company. See Providence Water, 708 A.2d at 543 (citing United Transit Co. v. Nunes, 209 A.2d 215 (R.I. 1965) for the proposition that even

determination of “expenses accounts is the function of management” that should not be interfered with absent evidence tending to prove ratepayer harm). Only certain accounts are restricted, thereby dedicating use of the funds they contain to a particular purpose (1/6/2005 Transcript at 114-116) (discussion regarding propriety and effect of restricting an account). In addition, the utility is afforded an Operating Reserve to accommodate unanticipated fluctuations in operating expenses. In Re: Narragansett Bay Commission Abbreviated Application for Rate Relief, Docket 3592, Order 18124 at 12. Based on these legal and regulatory principles, while the Commission may authorize funding for a particular number of employees, the Division does not believe the Commission has “authorized” WWD to employ 33 individuals.

WWD cannot legitimately contend that because the utility (immediately prior to the rate hearing) was operating with 33 employees that its proposed salaries and wage expense level is reasonable and necessary. Again, the WWD must produce concrete evidence that its reasonable operational needs require the claimed expense level within the Rate Year. New England Tel. & Tel Co. v Public Utilities Comm’n, 446 A.2d 1376, 1385 (R.I. 1976). The application of any other rule will allow utilities to claim costs for unfilled positions, receive rates to cover these positions and then continue to experience vacancies.

The evidence presented at hearing shows that throughout the test year, WWD operated with an average 31.75 employees, not 33 employees (WWD Response Div. 1-6). The overwhelming weight of the evidence, then, supports the Division’s recommendation that WWD does not require 33 employees to function properly. The Commission, therefore, should disallow the funding amounts for WWD’s claim for

Salaries and Wages (as well as other related adjustments) as reflected in the Surrebuttal Testimony of Andrea C. Crane and ACC-3, 4, 5 & 6.

C. Maintenance of Roads and Walks

WWD seeks \$180,621 annually for the purpose of maintaining the City of Woonsocket's "Roads and Walks." As reflected in Ms. Crane's Direct Testimony, WWD's test year costs "appear abnormally high relative to prior year levels."³ WWD contends that the utility is now required to perform curb-to-curb paving restoration on roads that have been resurfaced within five years. According to WWD, this new burden has resulted in a significant increase in road and walks expense (Marvel Rebuttal, Page 2, lines 6-10).

In response to Division Record Request 1-1, WWD produced a two-page document that purports to reflect the City of Woonsocket's new paving requirements (the "Paving Policy"). On cross-examination Mr. Marvel testified that the Paving Policy was "not an ordinance of the city, it's a policy of the Public Works" (1/5/2005 Transcript at 113, lines 16-17).

As a matter of law, the Commission has voided unreasonable curb-to-curb paving regulations when they are adopted by a municipality in the form of an ordinance, In Re: petitions for Review of Ordinances Adopted by the City of Cranston and by the City of Providence, Pursuant to R.I.G.L., § 39-1-30, Dockets Nos. 2641 & 2624, Order 15919, (nullifying Ordinance and Regulations of the City of Providence requiring curb-to-curb paving), remanded for further hearings, 745 A.2d 769 (R.I. 2000), or, when a municipality attempts to implement them in the form of a policy. In Re: Petitions for

³ \$170,253 (Test Year) vs. \$64,064 (FY 2003), \$77,679 (FY 2002), \$82,550 (FY 2001) and \$40,000 (FY 2000) (Crane Direct at 14).

Review of Ordinances Adopted by the City of Cranston and by the City of Providence, Docket 3485, Order 17857 (invalidating “sketch” containing curb-to-curb paving requirements that would increase a ratepayer’s costs from \$1,500 to \$15,000 for specific properties). The basis for the Commission’s rulings in this regard is that curb-to-curb paving requirements result in unreasonable ratepayer expenses. In Re: Petition for Review of Ordinance, Dockets 2641, 2624, Order 15919 at 49-50.

Mr. Marvel, himself, testified on cross-examination as follows:

My opinion was that curb-to-curb is excessive and that we should not be required to go any farther than, say, the middle of the road.

(1/6/2005 Transcript at 109, lines 10-13).

Lastly and perhaps most importantly, WWD has implicitly conceded that the City’s “Paving Policy” is being applied in a completely preferential, and therefore, arbitrary and capricious manner. The Division requested WWD to provide the agency and the Commission with the manner that the City applies the Paving Policy to Verizon, Narragansett Electric, New England Gas and Woonsocket Sewer Department. WWD initially responded as follows:

To the best of Woonsocket Water Department’s knowledge, this policy has been applied on an inconsistent basis to the other utilities.

(WWD Response to Record Request 1-2).⁴

In other words, the City requires WWD to comply with the Paving Policy, but does not apply the policy all of other utilities on a consistent basis. Water utility ratepayers, thus, are being asked to pay for the increased costs of curb-to-curb paving but

⁴ On January 26, 2005, WWD amended its response to indicate that the Woonsocket Sewer Department and New England Gas “have been required,” in particular instances, to comply with the Paving Policy.

at least telephone and electric ratepayers (and gas and sewer to a different extent) are not. The application of the Paving Policy in such an inconsistent manner is *per se* unlawful. G.L. § 39-2-3 (prohibiting unreasonable preferences or prejudices by a utility to any person firm or corporation . . . “in any respect”). Based upon the foregoing, WWD’s claim for Maintenance of Roads and Walks should be modified as reflected by ACC-7.

D. Light and Power Contract

In Response to Commission Data Request 1-3, WWD provided “Refreshed Bid” information associated with Light and Power services to be provided to the City of Woonsocket. The information provided can be summarized as follows:

<u>Bidder</u>	<u>Price (per kwh)</u>	<u>Contract Term</u>	<u>Scope</u>
TransCanada	\$.057 ⁵	4 years	All City facilities
Constellation Energy	\$.0572 ⁶	3 or 5 years	All City facilities but Wastewater
Constellation Energy	\$.054 ⁷	3 or 5 years	Wastewater

A comparison of these bids reflects that for municipal water service, TransCanada offered the lowest initial bid and the lowest “Refreshed Bid” prices. Nonetheless, the City selected Constellation Energy. At hearing, Ms. Crane explained how the City’s selection of Constellation Energy requires water ratepayers to assume an unfairly disproportionate share of the City’s Light and Power Costs.

⁵ Initially bid at \$.0545 (3 year) and \$.0550 (4 year) (Crane Direct at 16, line 18).

⁶ Initially bid at \$.0562 (Crane Direct at 16, line 16).

⁷ Initially bid at \$.0556 (Crane Direct at 16, line 16).

Q. But you still say it's inappropriate that they [the City] should have the lower rate?

A. Yeah, I do. And one of the reasons is when you look at what happened when the rates were refreshed, I mean, the initial bid had a differential for the wastewater treatment plant, but it was a relatively small differential. Then they come back a few weeks later and they refresh their bids. Now, I wouldn't have been surprised if both of those rates had increased because of an increase in wholesale power costs, but what happened in the refreshed bids was the wastewater treatment plant actually went down significantly and the rate to the other city agencies went up. . . if we had taken the wastewater plant out and just looked at the bids for other city agencies, TransCanada had the lowest bid. So in essence, you're water customers are stuck with Constellation because Constellation gave a bigger break to your wastewater treatment plant. I don't think that's fair at all.

(1/6/2005 Transcript at 76-77). Indeed, WWD acknowledged in Response to Commission Data Request 1-3 that it was only because of the presence of the "wastewater" bid that the City deemed Constellation the "lower bid."

To correct this fundamental inequity via the ratemaking process, the Division recommended, and continues to recommend, that the Commission utilize a weighted average overall price to the City:

COMMISSIONER HOLBROOK: Isn't it only fair to the water company to benefit and not be penalized for the awarding of the contract by the city to the party that provided the most power at the cheapest rate to the wastewater treatment facility?

THE WITNESS: I think that the water division should pay its fair share without being penalized because they went with a contract that was actually to the disadvantage of the water facility. And that's why I think the fairest way is to use a weighted rate for the entire city's accounts and apply that rate to the water department, and that's what I've done in my recommendation.

(1/6/2006 Transcript at 80-81). Ms. Crane's reasoning is sound and remains unimpeached by WWD. The Commission, therefore, should adopt the recommendation of the Division regarding Light and Power as reflected in ACC-8.⁸

E. Light and Power – Harris Pond

WWD also seeks to increase its power costs by \$25,000 to reflect "estimated usage of Harris Pond for the rate year." WWD, however, has conceded that there were virtually no light and power costs associated with Harris Pond during its test year and usage of the Pond during the test year was negligible (WWD Response to Division Data Request 1-16).

Furthermore, WWD did not address the Division's *pro forma* downward adjustment of \$21,262 in its Rebuttal Testimony. Rather WWD, through cross-examination, sought to claim that the Ratio of Test Year Power to Chemical Costs should have been greater, and that accordingly, the Division's adjustment should have been lower (1/6/2005 Transcript at 43). WWD's argument fails on procedural as well substantive grounds.

As Ms. Crane explained on behalf of the Division, the Ratio was calculated appropriately based on WWD's test year data.

What I used was your test year number. Now, you might make a claim that the test year number that I used was inappropriate, but based on the information that I had then and that I still have now its still the best number that I had to work with . . . I had no details about what was in that \$25,000.

(1/6/2005 Transcript at 41, lines 4-8 & 22-23).

⁸ At hearing, Mr. Stearns revised his Light and Power Cost Recommendation in favor of WWD. The revised recommendation has been incorporated into ACC-10. The Division does not believe WWD contests this component of the Division's overall revenue requirements recommendation.

Further, even if somehow the percentage were greater (which remains completely unproven), the Division's adjustment would not have been greatly affected. At most with a greater percentage, Line 5 of ACC-9 would have been about \$8,000, which, in turn, would have reduced the Division's final adjustment by about \$3,165 (1/6/2005 Transcript at 43, lines 12-24).

WWD has completely failed to present evidence in its Rebuttal Testimony, in response to Division Data Request 1-16 or at hearing to show how the utility determined its proposed \$25,000 *pro forma* adjustment for Harris Pond. Further, as shown above, WWD's efforts at impeaching the Division's expert on the issue were wholly ineffectual. The Commission, therefore, should adopt the Division's recommendation for Light and Power – Harris Pond as reflected in ACC-9.

F. Debt Service Reserve

WWD has filed a claim for \$780,540 in annual funding for its anticipated annual debt service costs. The Division has recommended adjusting this figure downward by \$31,064 (ACC-15) based on a three-year average (2005-2007).

WWD claims that when the years 2006 or 2007 are examined in isolation, the Division's recommendation does not satisfy WWD's debt service requirements and that this deficiency is a violation of § 603(1) and/or (2) of the City's Revenue Bond Trust Indenture (Woodcock Rebuttal at 7, lines 20-21). Ms. Crane rebutted WWD's contention. The Division gave WWD approximately \$62,000⁹ more in 2005 than WWD required and WWD could use "that money in Years Two and Three" to satisfy its debt

⁹ \$749,476 – \$687,348 = \$62,128.

service requirements as its needs increased in the later years (1/6/2005 Transcript at 52, lines 19-24).

As the rate applicant, WWD has the burden of presenting evidence that supports its interpretation of the City's Revenue Bond Trust Indenture. G.L. § 39-3-12. Further, utilities have always provided the Commission with testimony of bond counsel and/or a financial consultant when these types of issues arise in rate proceedings. See e.g., In Re: NBC General Rate Filing, Docket 3483 (where NBC's financial consultant and bond counsel provided the Commission with Direct Testimony regarding coverage requirements).

WWD has utterly failed to satisfy its burden of proof in this regard. The plain language of § 603(1) requires the City to use its "best efforts" to "establish and maintain Rates and Charges adequate at all times, with other available funds, to provide Revenues . . . to pay or provide for as the same become due or payable (i) Operating Expenses..." WWD, thus, is not required to establish and maintain rates at all times at a certain level.

Furthermore, Section 603(2) requires the City to use its "best efforts" to establish Net Revenues in each Fiscal Year during which Bonds are Outstanding . . .at least . . . 125% of the Debt Service Requirement..." In this docket, even WWD is not seeking annual debt service costs that equal 125% of its Debt Service Requirements. Rather, as its pending application to issue long-term debt and issue revenue bonds (D-05-5) makes clear, WWD seeks to use IFR funds to satisfy this threshold. Section 603(2), thus, is completely irrelevant to WWD's erroneous interpretation of § 603 that the utility is required to establish and maintain rates in *each year* to pay certain specified obligations.

The Commission should accept the Division's annual debt service reserve recommendation as reflected in ACC-15.

G. Property Taxes

In connection with anticipated property tax expenses, WWD seeks a *pro forma* increase from the test year of \$76,949. The entire amount of this increase is associated with an estimated tax increase that is to be imposed by the Town of North Smithfield (1/5/2005 at 58, lines 4-7). However in Response to Commission Data Request 1-13, WWD stated that its actual tax bill reflected a reduction of \$20,093 (relative to FY 2004) to the North Smithfield tax bill. With this reduction, WWD will incur a total tax expense of \$121,865, which is \$10,708 less than the test year actual expense of \$132,673.

Testimony adduced at hearing corroborated the nature of the discrepancies between WWD's claim and WWD's actual tax bill (1/5/2005 Transcript at 60, lines 1-4).

The Division's recommendation—a *pro forma* adjustment of \$76,949—is based on WWD's test year figure of \$132,673. Given WWD's concession in its data response and at hearing that its total tax expense will be \$121,865, the Division recommendation must be viewed as fair and reasonable.¹⁰

H. Legal and Engineering Expenses (Regionalization and Privatization)

In its rate application, WWD seeks \$50,000 annually for legal expenses and \$50,000 annually for engineering expenses associated with the issues of regionalization and privatization. WWD defines "regionalization" as "trying to market excess capacity WWD has principally to North Smithfield and the Town of Cumberland" (1/5/2005

¹⁰ In fact WWD has already conceded the issue. WWD did not address the Division's recommendation in its Rebuttal Testimony in any manner whatsoever.

Transcript at 131, lines 14-16). WWD defines “privatization” as “having an outside vendor come in and take over the operation of the treatment plant” (1/5/2005 Transcript at 132, lines 16-19). Expenses for studying these issues are purportedly to be incurred by two entities: Eisenhardt Group (“Eisenhardt”) and WWD’s legal counsel.

The Commission should not grant proposed increases for specific activities when the utility has afforded neither the Commission nor the Division with detailed documentation reflecting the nature and extent of the services to be provided, an explanation for the need of the services and a good faith estimate of the cost of the services. New England Tel. & Tel Co, 446 A.2d at 1385. This should be particularly true when the utility does not have control over whether or not the costs will be incurred.

In the present case, WWD utterly failed to satisfy this legal standard. Although bills for services rendered, containing cursory descriptions of work performed and time allocations regarding “Regionalization” and “Privatization” were produced totaling \$53,198.53 (WWD Response to Commission Data Request 1-8), WWD conceded that it did not have any written report, recommendation or other work product relating to the engagement (1/5/2005 Transcript at 126, lines 1-3), and had not entered into any contract for services reflecting the engagement (1/5/2005 Transcript at 125, lines 3-14). Accordingly, detailed documentation reflecting the nature and extent of the services to be provided and their associated costs was nonexistent.

Further, it is beyond dispute that the *City of Woonsocket dictated* that the utility incur the expenses for the activities associated with “Regionalization” and “Privatization” (1/5/2005 Transcript at 128 & 140, lines 8-11). WWD’s Water Superintendent, the very person charged with running WWD and the individual with the most knowledge and

experience regarding WWD's operations, did not believe it was necessary for the utility to incur these expenses. In his opinion, WWD already was a regional system, rendering further study of the issue superfluous (1/5/2005 Transcript at 148, lines 4-10). From all of the foregoing, it follows that WWD's claims for expenses associated with "Regionalization" and "Privatization" must be disallowed in their entirety (ACC-12, 13).

I. Rate Case Expense

The Commission's role in rate cases is to determine fair and reasonable rates. Public Utilities Comm'n v. East Providence Water Co., 136 A. 447, 449 (R.I. 1927). In the instant case, the WWD seeks to recover an increase of \$40,000 in annual funding for Rate Case Expenses in the rate year. This amount represents an increase of 100% over the WWD's test year figure (\$20,000 per year) and is not a "fair and reasonable" increase, because the projection fails to take into account the amount that was already included in the reserve.

WWD has projected that the instant matter will cost the company \$120,000 and has assumed a three-year recovery period. Accordingly, WWD will require \$40,000 annually to recover these costs. Evidence adduced at hearing suggests that the \$120,000 estimate was on target, or even inflated. Mr. Woodcock testified:

- Q. Do you know to date what Woonsocket Water's rate case costs are?
- A. As of I think it may have been mid December it was about \$46,000. They had been billed for rate case expenses between myself and legal counsel and the estimates to complete was including time that had yet to be billed prior to December of another \$48. That total's \$95,000. It does not include anything from the Division.

(1/5/2005 Transcript at 32, lines 4-11).¹¹

Starting with this basic assumption (as well as a three-year recovery period), Ms. Crane described the difference between WWD's and the Division's estimates for Rate Case Expense:

...the reason we [the Division] came up with a different result was because I included the fact that you're starting with I think it was about \$57,000 where you started this case with about \$57,000 in you reserve.¹² You didn't include that, that reserve, so that's the only difference between our recommendations. I gave the ratepayers credit for the amount that they had already funded in that reserve and you didn't. Other than that, our recommendations were the same. I didn't make any adjustment to your methodology and I don't think I made any adjustment to your overall costs for this case.

(1/6/2005 Transcript at 46-47). Had the company utilized the existing \$57,105 in calculating the total funds available to cover the company's reasonably anticipated rate case expenses over the three-year recovery period, WWD only would have required to recovery an additional \$20,965¹³ over the same period, not an increase of \$40,000.

The Division has recommended an annual funding level of \$30,000 in recognition that "there could be some additional regulatory costs incurred during [the three-year period] that are not currently anticipated" (Crane Direct at 26, lines 13-14). WWD's Rate Case Expense claim must be reduced by \$10,000 (ACC-14) due the utility's erroneous deviation from appropriate ratemaking principles (*i.e.*, failing to take into

¹¹ On January 26, 2005, WWD purportedly updated Commission Data Response 1-9. Rather, than a precise up-to-date tally of WWD's Rate Case Expenses, WWD merely provided the Commission and Division with an "estimate" of all expenses (excluding those of the Division) of \$115,000. The Division does not find the level of detail contained in WWD's data response, at this stage of the proceedings, acceptable at all.

¹² WWD's rate case reserve had a balance of \$57,105 at the end of FY 2004.

¹³ $(\$120,000 - \$57,105)/3 = \$20,965$.

account the existing balance in Rate Case Expense Reserve). Any other ruling will result in ratepayers' paying rates for this item that are excessive, unfair and unreasonable.

J. Operating Reserve

The Division recommends that the Commission continue to permit WWD to recover a 1.5% operating reserve allowance; however, the percentage should only be applied to WWD's operating and maintenance expenses (ACC-16 – Revised). For its part, WWD recommends that the Commission utilize the same 1.5% figure but apply the percentage to total revenues (or allowed expenses) (Woodcock Rebuttal at 10, line 18). WWD's position, again, is flawed as a matter of law.

In In Re: Pawtucket Water Supply Bd. General Rate Filing, Docket 3497, Order 17974 at 52, the Pawtucket Water Supply Board ("PWSB") requested the Operating Revenue Allowance be calculated on 1.5% of total expenses. The Commission, however, wisely recognized that the "actual number" for the allowance "is driven by actual expenses" and that the "[a]llowance is designed to address unexpected fluctuations in operating expenses." Id. Since these "costs fluctuate more than debt service"—which was expected to rise dramatically over the next few years, it made sense to limit the application of the Operating Reserve percentage to operating and maintenance expenses only. Id.

The Commission followed its methodology for calculating the Operating Reserve In Re: Narragansett Bay Commission Abbreviated Application for Rate Relief, Docket 3592, Order 18124. In that case, the Commission also calculated the Operating Reserve Allowance by applying 1.5% to NBC's operating and maintenance expenses—costs that

excluded expenses associated with the utility's Debt Service, Carry Forward from 2003 and Debt Coverage.

The Commission's ruling in both of these dockets governs the instant proceeding.

As Ms. Crane¹⁴ explained at hearing:

But just since in the past five to seven years in Rhode Island we've seen the IFR reserves grow significantly. We've seen debt service grow significantly and so it certainly is appropriate for the Commission to limit the one-and-a-half percent as it did in the Pawtucket case.

(1/6/2005 Transcript at 104, lines 10-16).

In the present case, approximately 70% of WWD's requested rate increase is related to IFR or debt service (1/5/2005 Transcript at 34, lines 7-10). The record further reflects that these accounts will be growing significantly in the not-to-distant future (1/5/2005 Transcript at 96, lines 7-10). Their anticipated growth parallels similar growth that has and continues to occur in connection with NBC's and PWSB's debt service and IFR requirements. Just as the Commission limited the Operating Reserve to 1.5% of Operating and Maintenance Expenses in Dockets 3497 and 3592, it is eminently reasonable to impose the same limitation on WWD's Operating Reserve. WWD's claim of an Operating Reserve of \$110,611, therefore, must be reduced by \$54,339 as reflected in ACC-16 – Revised.

III. CONCLUSION

For the foregoing reasons, the Division requests that the Commission grant WWD's rate application on such terms and conditions as are consistent with the

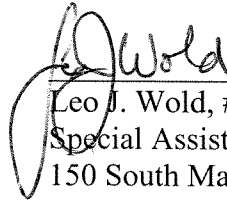
¹⁴ Ms. Crane was also the Division's expert consultant in Docket 3497.

attachments to this memorandum and to the Division's position at hearing.

DIVISION OF PUBLIC UTILITIES AND
CARRIERS

By its attorneys,

PATRICK C. LYNCH
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "L. Wold", is written over a horizontal line. The signature is stylized and cursive.

Leo J. Wold, # 3613
Special Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
401-274-4400, ext. 2218

CERTIFICATE OF SERVICE

I certify that a copy of the within memorandum of law was forwarded by regular mail, postage prepaid, to the individuals designated on the Docket's Service List on the February __, 2005.

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

REVENUE REQUIREMENT SUMMARY

	WWD Claim (A)	Recommended Adjustments		Recommended Position
1. Personnel Costs	\$1,405,222	(\$46,377)	(B)	\$1,358,845
2. Maintenance and Servicing	1,107,576	(268,607)	(C)	838,969
3. Operating Supplies	131,419			131,419
4. General Charges	4,729,818	(44,612)	(D)	4,685,206
5. Plus Operating Reserve	110,611	(54,339)	(E)	56,272
6. Less Miscellaneous Income	<u>(215,581)</u>			<u>(215,581)</u>
7. Total Net Revenue Requirements	\$7,269,065	(\$413,936)		\$6,855,129
8. Operating Revenues @ Present Rates	<u>5,208,677</u>	<u>56,609</u>	(F)	<u>5,265,286</u>
9. Revenue Deficiency	<u>\$2,060,388</u>	<u>(\$470,545)</u>		<u>\$1,589,843</u>
10. Increase over Present Rates	<u>39.56%</u>			<u>30.19%</u>

Sources:

- (A) Testimony of Mr. Woodcock, Schedule 1.
- (B) Schedule ACC-3, ACC-4, and ACC-5.
- (C) Schedule ACC-7, ACC-8, ACC-9, ACC-10, ACC-11, ACC-12, and ACC-13.
- (D) Schedule ACC-6, ACC-14, and ACC-15.
- (E) Schedule ACC-16.
- (F) Schedule ACC-2.

Schedule ACC-2
Revised

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

OPERATING REVENUE

1. FY 2000 CCFs	2,091,982	(A)
2. FY 2001 CCFs	1,930,489	(A)
3. FY 2002 CCFs	1,860,311	(A)
4. FY 2003 CCFs	1,859,967	(A)
5. FY 2004 CCFs	<u>1,803,674</u>	(A)
6. Five Year Average	1,909,285	
7. Three Year Average	1,841,317	
8. Adjustment for 2003 Mill Fire and Other Customers That Have Left the System	<u>(59,272)</u>	(B)
9. Pro Forma Recommendation	1,782,045	
10. Company Claim	<u>1,755,220</u>	(C)
11. Recommended Adjustment CCFs	26,825	
12. Current Retail Rate / CCF	<u>\$2.36</u>	(D)
13. Gross Revenue Adjustment	\$63,308	
14. Incremental Power and Chemical Costs	<u>(6,699)</u>	(E)
15. Net Revenue Adjustment	<u>\$56,609</u>	

Sources:

(A) Derived from Annual Reports to the Commission and response to Comm 1-15.

(B) Three year average per response to Comm 1-15, for customers lost in the mill fire (Consolidated Real Estate, Florence Drive LLC, and ACE Industry) as well as other large customers that have left the system.

(C) Testimony of Mr. Woodcock, Schedule 2, page 3.

(D) Testimony of Mr. Woodcock, Schedule 6.1.

(E) CCFs Power per Woodcock, Sch. 1, page 1.

Chemicals per Woodcock, Sch. 1, page 2.

\$252,289 Adjustment per Schedule ACC-8.

213,884 Adjustment per Schedule ACC-9.

(5,238) Adjustment per Schedule ACC-10

(21,262) Total

(\$1,335) Sales per Woodcock, Sch. 2, page 3.

\$438,339 Incremental Costs per CCF.

1,755,220

\$0.2497

Schedule ACC-3

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

PERMANENT SERVICES

1. Fiscal Year 2004 Actual	\$1,048,301	(A)
2. Annual Increase of 3% to 12/31/05	<u>4.55%</u>	(B)
3. Pro Forma Salary and Wage Increase	\$47,645	
4. Pro Forma Salary and Wages	\$1,095,946	(C)
5. Company Claim	<u>1,138,840</u>	(D)
6. Recommended Adjustment	<u>(\$42,894)</u>	

Sources:

(A) Response to DIV-1-1.

(B) Reflects 3% annual increase for 18 months.

(C) Line 1 + Line 3.

(D) Testimony of Mr. Woodcock, Schedule 1, page 1.

Schedule ACC-4

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

STUDY UPGRADE COSTS

1. Average Upgrade Adjustment (%)	4.50%	(A)
2. Recommended Salary and Wage Adjustment	<u>(\$42,894)</u>	(B)
3. Recommended Upgrade Adjustment	<u>(\$1,932)</u>	

Sources:

(A) Derived from Testimony of Mr. Woodcock, Schedule 1.1, page 1.

(B) Schedule ACC-3.

Schedule ACC-5

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

LONGEVITY COSTS

1. Average Longevity Adjustment (%)	3.62%	(A)
2. Recommended Salary and Wage Adjustment	<u>(\$42,894)</u>	(B)
3. Recommended Upgrade Adjustment	<u>(\$1,552)</u>	

Sources:

(A) Derived from Testimony of Mr. Woodcock, Schedule 1.1, page 1.

(B) Schedule ACC-3.

Schedule ACC-6

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

PAYROLL TAXES

1. Recommended Payroll Adjustments	(\$46,377)	(A)
2. Payroll Tax Rate	<u>7.65%</u>	(B)
3. Recommended Adjustment	<u>(\$3,548)</u>	

Sources:

(A) Schedules ACC-3, ACC-4, and ACC-5.

(B) Testimony of Mr. Woodcock, Schedule 1.1, page 1.

Schedule ACC-7

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

MAINTENANCE - ROADS AND WALKS

	(A)	
1. FY 2000	\$40,000	
2. FY 2001	82,550	
3. FY 2002	77,679	
4. FY 2003	64,046	
5. FY 2004	<u>208,666</u>	
6. Three Year Average	\$116,797	
7. Five Year Average	\$94,588	
8. Pro Forma Recommendation	\$116,797	(B)
9. Company Claim	<u>180,621</u>	(C)
10. Recommended Adjustment	<u>(\$63,824)</u>	

Sources:

(A) Response to DIV-1-1.

(B) Reflects three year average.

(C) Testimony of Mr. Woodcock, Schedule 1, page 1.

Schedule ACC-8

WOONSOCKET WATER DEPARTMENT
 RATE YEAR ENDING DECEMBER 31, 2005
 LIGHT AND POWER - NEW CONTRACT

	Kwhs Per RFP (A)	Percent	Rate (B)	Weighted Rate	
1. City Usage Including WWD	391,919	30.13%	\$0.0572	\$0.0172	
2. Wastewater Plant	909,000	69.87%	0.0540	0.0377	
3. Total	1,300,919			\$0.0550	
4. Test Year Kwhs-WWD				<u>2,342,429</u>	(C)
5. Pro Forma Energy Cost				\$128,749	
6. Company Claim				<u>133,987</u>	(C)
7. Recommended Adjustment				<u>(5,238)</u>	

Sources:

- (A) Response to DIV-1-11.
- (B) Contract with Constellation NewEnergy, provided as Schedule N to Mr. Marvel's testimony.
- (C) Testimony of Mr. Woodcock, Schedule 1.1, page 3.

Schedule ACC-9

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

LIGHT AND POWER - HARRIS POND

1. Three Year Average Harris Pond Costs	\$9,054	(A)
2. Ratio of Test Year Power to Chemical Costs	<u>42.90%</u>	(B)
3. Average Power Costs - Harris Pond	\$3,884	
4. Pro Forma Rate Year Increase	<u>24.49%</u>	(C)
5. Pro Forma Harris Pond Cost	\$4,835	
6. Test Year Actual Cost	<u>1,097</u>	(A)
7. Pro Forma Rate Year Adjustment	\$3,738	
8. Company Claimed Adjustment	<u>25,000</u>	(D)
9. Pro Forma Adjustment	<u>(\$21,262)</u>	

Sources:

(A) Response to DIV 1-16.

(B) Based on ratio of Test Year costs, per Testimony of Mr. Woodcock, Schedule 1.2.

(C) Increase from \$103,418, per Testimony of Mr. Woodcock, Schedule 1.1, page 3, to \$128,749 per Schedule ACC-8.

(D) Testimony of Mr. Woodcock, Schedule 1.1, page 3.

Schedule ACC-10
Revised

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

LIGHT AND POWER COSTS - NEC

1. Recommended Division Adjustment (\$1,335) (A)

Sources:

(A) Testimony of Mr. Stearns, Schedule DRS-1, Revised.

Schedule ACC-11

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

PROPERTY AND FIRE TAXES

1. Company Claimed Adjustment	\$76,949	(A)
2. Pro Forma Adjustment	<u>(\$76,949)</u>	

Sources:

(A) Testimony of Mr. Woodcock, Schedule 1, page 1.

Schedule ACC-12

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

LEGAL SERVICES

1. Company Claimed Adjustment	\$50,000	(A)
2. Pro Forma Adjustment	<u>(\$50,000)</u>	

Sources:

(A) Testimony of Mr. Woodcock, Schedule 1, page 1.

Schedule ACC-13

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

ENGINEERING SERVICES

1. Company Claimed Adjustment	\$50,000	(A)
2. Pro Forma Adjustment	<u>(\$50,000)</u>	

Sources:

(A) Testimony of Mr. Woodcock, Schedule 1, page 1.

Schedule ACC-14

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

RATE CASE COSTS

1. Recommended Annual Funding	\$30,000	(A)
2. Company Claim	<u>40,000</u>	(B)
3. Recommended Adjustment	<u>(\$10,000)</u>	

Sources:

(A) Testimony of Ms. Crane, page 25.

(B) Testimony of Mr. Woodcock, Schedule 1, page 2.

Schedule ACC-15

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

DEBT SERVICE COSTS-CWFA LOAN

Calendar		Interest	Principal	Fees	Total	
Year	(A)	(A)	(A)			
1. 2005	\$273,032	\$375,250	\$39,066	\$687,348		
2. 2006	348,845	385,000	48,950	782,795		
3. 2007	341,260	390,000	47,025	778,285		
4. 2008	332,329	400,000	45,075	777,404		
5. 2009	322,049	410,000	43,075	775,124		
6. Three Year Average (2005-2007)				\$749,476		
7. Company Claim				780,540	(B)	
8. Recommended Adjustment				<u>(\$31,064)</u>		

Sources:

(A) Testimony of Mr. Marvel, Schedule B, page 3.

(B) Testimony of Mr. Woodcock, Schedule 1.1, page 4.

Schedule ACC-16
Revised

WOONSOCKET WATER DEPARTMENT

RATE YEAR ENDING DECEMBER 31, 2005

OPERATING RESERVE

1. Company Claimed Expenses	\$7,374,035	(A)
Less:		
2. Renewal and Replacement Fund	\$150,000	(A)
3. IFR	1,600,000	(A)
4. Debt Service	<u>1,544,057</u>	(A)
5. Net Operating Expenses	\$4,079,978	
6. Recommended Adjustments	<u>(328,533)</u>	(B)
7. Pro Forma Operating Expenses	\$3,751,445	
8 Operating Reserve Ratio	<u>1.50%</u>	(C)
9. Operating Reserve Allowance	\$56,272	
10. Company Claim	<u>110,611</u>	(A)
11. Recommended Adjustment	<u>(\$54,339)</u>	

Sources:

(A) Testimony of Mr. Woodcock, Schedule 1, page 2.

(B) Schedules ACC-3 through ACC-14.

(C) Testimony of Mr. Woodcock, page 10.