

February 2, 2005

Via Hand Delivery and Electronic Mail

Luly Massaro, Commission Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Re: Docket No. 3626; Brief of Woonsocket Water Division

Dear Luly:

Enclosed please find the Brief of the Woonsocket Water Division in the above-referenced docket. Thank you for your attention to this filing.

If you have any questions, please give me a call.

Sincerely,



Craig L. Eaton, 5515
Attorney for the Woonsocket Water Division

Enclosure

cc: Mr. Leo J. Wold (via regular mail and electronic mail)
Mr. John Bell (via regular mail and electronic mail)
Ms. Cynthia Wilson (via regular mail and electronic mail)

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: WOONSOCKET WATER DIVISION

DOCKET NO.: 3626

**BRIEF OF WOONSOCKET WATER DIVISION
FEBRUARY 2, 2005**

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INTRODUCTION

Woonsocket Water Division (“WWD”) is requesting a 39% increase in rates, which would yield approximately \$2 Million in increased revenue. The increased revenue is extremely important to maintain the safe and efficient operation of the system. The requested increase is primarily needed to fund 3 major components: (1) infrastructure; (2) debt service; and (3) personnel. These three components are vital to maintaining the integrity of the system. As testimony has shown, salary for WWD is much below the average for similar Rhode Island water utilities. This gap is making it increasingly difficult for WWD to keep and attract necessary workers. Further, the increase in rates is necessary to continue the upgrade to the system’s infrastructure. Increased funding to the infrastructure and debt service accounts will held fund these necessary capital improvements.

The request for increased funding is made under the backdrop of decreasing revenues. Because several large industries have recently closed, WWD has less revenue to fund its fixed costs. WWD believes all the funding requested is needed to optimally run its system. What follows is further support for certain of the cost components which comprise the overall request:

I. The Division’s recommendation with regard to the recovery of energy supply costs is based on an incorrect analysis.

The Division recommends the recovery of energy supply costs on a “weighted city-wide rate” instead of the recovery for the actual cost of the supply. The reason for this recommendation is the Division’s faulty assertion the TransCanada price was lower than the Constellation price with regard to other City agencies. As Ms. Crane states:

In fact, 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 (sic) 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 all¹ . . .

So you know, clearly, the wastewater's low rate was the driver in terms of choosing Constellation which probably for the City was a good choice, but I don't think that the water customers should have to pay a higher rate because of that. So that's why I recommend that they pay a weighted rate based on all the city's facilities².

This is just plain wrong for two reasons:

- (1) As the Division's expert acknowledged³, power suppliers will often charge a lower cost for facilities like the City's wastewater plant because of its high and constant load factor. Consistent with accepted ratemaking principles, WWD is merely proposing to recover the actual cost to supply its facilities; and
- (2) **The evidence is clear that the Constellation bid is the same as the TransCanada bid** for the City facilities. Schedule N to WWD Exhibit 1A sets forth the pricing for City facilities of \$.0544 per kwh for the first four plus months and \$.0572 per kwh for the remainder of the term. This equals to the same \$.0572 per kwh bid from TransCanada and provides the extra benefit of an additional year of service. Accordingly, Ms. Crane's reasoning for recommending a "weighted city-wide rate" is based on a faulty analysis and there exists no further evidence to support reducing WWD's recovery of the cost for electricity supply⁴.

¹ Hearing Transcript, January 6, 2005, p.77, lines 16-23.

² Hearing Transcript, January 6, 2005, pp.79-80, lines 1-3.

³ Hearing Transcript, January 6, 2005, p.76, lines 4-5.

⁴ Note that certain questioning has raised the issue that the water treatment plant (which does not comprise all water facilities) has been charged the lower rate of \$.0537 per kwh and \$.0540 per kwh. However, this is due to an error in the account number address in the contract. Woonsocket and Constellation are rectifying the situation, resulting in WWD being responsible for the city rate. Mr. Marvel testifies to this in the Hearing Transcript of January 6, 2005, p.7, lines 6-15.

II. Using an average to determine sales ignores the continued decline of sales.

It is uncontested that WWD sales continue to decline⁵. The Division set sales figures for the rate year based on a three-year average of sales, with an adjustment for the revenues lost from businesses closed or destroyed in the 2003 Mill Fire.

Basic ratemaking principles allow for an adjustment from the test year for known and measurable charges. This adjustment forms a portion of the rate year that is filed for approval with the Commission. See, Generally, Narragansett Electric Company v. Harsch, 117 R.I. 395, 367 A.2d 1194 (1977). The permanent loss of large customers is such a “known and measurable” event which has and will continue to affect sales. Because of this permanent loss, WWD believes the most fair number to use is actual test year consumption (adjusted for the lost industries identified in the attachment to Commission Data Request response 1-15).

The fairness of this methodology becomes abundantly clear when evaluating historical sales of WWD. As testified to by Mr. Woodcock in WWD Exhibit 3, except for FY 2000, there has been a decrease in sales each year since FY 1999⁶.

Under questioning from the Chairman, the Division witness acknowledges this downward trend⁷:

Q. Okay. Now, explain to me why - - I mean, I look at this, not being an expert, and say the trend looks like it's going down. What am I missing?

A. The trend probably is going down and we're seeing that - - we're seeing that for a lot of reasons . . .

⁵ See, e.g., Division Exhibit 1, ACC-2. See also Hearing Transcript, January 6, 2005, p.5, lines 12-18.

⁶ Mr. Woodcock points out that FY 2000 had some of the warmest and driest periods in recent Rhode Island history, contributing to greater water use.

⁷ Hearing Transcript, January 6, 2005, p.143, lines 11-16.

Because the decrease in consumption is a trend due to the permanent loss of customers, WWD feels the most appropriate data to use is the more recent test year. The use of an average would unfairly include sales numbers from non-existing customers.

III. Funding needs to reflect that WWD has 33 employees.

The Division's pre-filed testimony states that WWD has 36 authorized employees⁸. WWD's response to Data Request DIV 1-6⁹ shows authorization for 36 employees, with 33 positions presently filled. Further, under cross-examination from the Commission, Mr. Marvel makes it very clear the ramifications for WWD if funding is only provided for 32 employees¹⁰:

Q. If the Company were to follow the Division's recommendation and provide for 32 employees, what would that mean?

A. It would have to let somebody go.

Q. No ifs, ands or buts about it?

A. No ifs, ands or buts. It's a government issue and we can't have more employees on the payroll than we have cash to pay them.

Q. And would service to the ratepayers suffer as a result of this?

A. Yes, I believe so.

No evidence was introduced by the Division to contradict the testimony that service to ratepayers would suffer if proper funding was not provided. Further, the parties agree on the need for salary

⁸ Division Exhibit 1, p.11, line 6.

⁹ Division Exhibit 4.

¹⁰ Hearing Transcript, January 6, 2005, p.169, lines 4-14.

upgrades¹¹. Please note that if funding is provided for 33 employees, overall salary upgrade and longevity funds would need to reflect this¹².

Even if the proposed salary upgrade funds are provided, WWD will still be approximately 15%-20% below the water utility average in Rhode Island for comparable employee positions¹³. As the responses to Commission Data Request 1-2 and Division Data Request 1-4 make clear, this pay differential continues to put undue pressure on WWD's ability to hire and keep qualified personnel. Mr. Marvel's testimony at the hearing in response to a Commission inquiry further buttresses this point¹⁴.

- Q. Would you be content to stay where the recommendation is now or would you, if you had your druthers in the matter, reconsider - - I'm not trying to give money away, but I'm trying to address a problem that's been identified.
- A. It's awkward for me to answer these questions because obviously I'm in that pile; I don't want to give a self-serving answer, but we've made many piecemeal attempts over the years that I think, you know, you either fix it or propagate the problem, just keep it going. That's my opinion.

Certainly, WWD would welcome any Commission determination to make salaries commensurate with the other Rhode Island water utilities.

¹¹ Division Exhibit 1, p.12, lines 10-19.

¹² WWD Exhibit 3, p.5, lines 4-16.

¹³ Commission Exhibit 1, COMM 1-2.

¹⁴ Hearing Transcript, January 5, 2005, pp.171-177.

IV. The costs included for Harris Pond are virtually all related to power and need to be included in the cost of service.

The Division's recommendation to recover only \$3,738 is based upon the misguided assumption that 42.9% of the costs are for chemicals¹⁵. However, profiled testimony of WWD shows virtually all the costs are attributable to the cost of power¹⁶. The record shows that the only chemical added to water from Harris Pond is sodium hypochlorite. There were no funds spent for this chemical from December 2003 through May 2004. Further, Schedule 1.1, p. 3 of 4 of WWD Exhibit 1B clearly shows that the Harris Pond costs are for "light and power". If they were chemical costs, they would have been placed in the "chemical" column. Clearly, any assumption that these costs were to cover 42.9% as chemical expense is just plain wrong and not based on any record evidence. Accordingly, there is no basis to reduce the cost figure by 42.9%.

V. Because WWD needs to file another rate case shortly, an increase in the restricted rate case fund is necessary and appropriate.

WWD has requested funding for the restricted rate case fund be increased to \$40,000 per year. As stated by Mr. Woodcock in rebuttal testimony¹⁷.

Woonsocket will have to file a new case very shortly. They are preparing a filing with the Division for a new bond issue. In order to fund these new bonds, Woonsocket will have to file at least an abbreviated rate filing very shortly. It cannot wait for three years. In order to have sufficient funds to pay for its filings, an increase in the rate case restricted fund will be needed. I believe the annual funding included in our original filing is the appropriate value for the Commission to allow.

The need for the additional funds is clearly shown in WWD's response to Commission Data Request 1-11¹⁸. This shows that adoption of the Division's proposal would result in a deficit to

¹⁵ Hearing Transcript, January 6, 2005, p.35, line 20.

¹⁶ WWD Exhibit 1A, pp.3-4.

¹⁷ WWD Exhibit 3, p.6, lines 21-27.

the restricted account of approximately \$25,000 in FY 2005 and \$35,000 in FY 2006.

Alternately, WWD's proposal would run a deficit of approximately \$7,600. Under cross-examination from WWD, the Division admits there is "nothing wrong" with the response¹⁹:

- Q. Do you find anything wrong with what was presented in that response? I mean, I think that goes to the question just asked, doesn't it? You don't know when, given those assumptions-- are there some things in those assumptions that you think are in error or wrong?
- A. Not specifically, no. I don't know when and I don't know how much. I'm not specifically challenging your assumptions here. I simply used the methodology that you recommended in your testimony.

Clearly, this is a policy call for the Commission. The record shows that adopting the Division's position will result in large deficits to the restricted account. Because the account is "restricted", the funds cannot be used for any other purpose. The "worst case" scenario is that the funds will build up in the account. However, if the account is in a deficit position, WWD runs the risk of not being able to secure necessary funds.

VI. WWD must have sufficient revenue each year to pay debt service or be in non-compliance with its covenants.

The response to Commission Data Request 1-16 makes clear that the indenture for the outstanding water revenue bonds require adequate funding during **each fiscal year**²⁰.

Without limiting the generality of the foregoing, the City shall use its best efforts to establish and maintain Rates and Charges at levels sufficient so that the total net revenues in each fiscal year during which bonds are outstanding shall equal at least one hundred twenty-five percent (125%) of the Debt Service

¹⁸ Commission Exhibit 1.

¹⁹ Hearing Transcript, January 6, 2005, p.46, lines 11-21.

²⁰ Commission Exhibit 1.

Requirement during each such fiscal year with respect to all bonds outstanding as of the first day of such fiscal year²¹.

As Mr. Woodcock testified, for purposes of the indenture the Division recommendation would not allow revenues to meet expenses for “each year”. This is further highlighted in the response to Commission Data Request 1-12²². This response clearly shows that the Division’s proposal causes larger shortfalls over longer periods of time.

In many ways, this analysis is the same as the analysis for funding rate case expenses. WWD is asking for sufficient funding within a restricted account. However, there is an added layer of the need to comply with a bond indenture. It is WWD’s position that the requested funding is prudent from both a policy position (having adequate funds to meet obligations) and a legal perspective (complying with the indenture).

VII. The Commission should not deviate from allowing a 1.5% operating reserve on total expenses without opening a generic docket.

The Division acknowledges that the Commission traditionally uses 1.5% of total expenses as an operating reserve²³. As Mr. Woodcock makes clear in his testimony, this is consistent with past practice and the recently settled Newport Water Rate Case²⁴. The facts before the Commission support continuing with the Commission policy of 1.5% until a generic docket can fully address the issue.

The reason continuing with the 1.5% reserve is prudent is that the Division and WWD have a difference of approximately 3% for projected sales and revenues. The purpose of a reserve is to provide funds for unanticipated deviations in revenue. Obviously, if sales

²¹ Hearing Transcript, January 5, 2005, p.80, lines 20-22.

²² Commission Exhibit 1.

²³ Division Exhibit 1, p.29, lines 18-20.

²⁴ WWD Exhibit 1B, p.10, lines 28-30.

unexpectedly dip from forecasts, prudence dictates having available funding to continue the safe and reliable operation of the Woonsocket system. Given the unexpected losses of major customers of WWD in the past, it makes sense to apply 1.5% to total revenue.

VIII. The increased roads and walks expense is due to a known and measurable change and dictates recovery based on the rate year filing.

The City has implemented a new roads and walks policy which requires WWD to perform more costly “curb to curb” paving on streets less than five years old. This written policy is provided in the response to Record Request 1. Further, as provided in the response to Record Request 2 (as supplemented), this policy is being applied to the City’s sewer department and New England Gas Company.

As Mr. Marvel states in his rebuttal testimony, the full width paving policy was implemented in mid-year FY 2003 and is known and measurable²⁵. As referenced in Section II of this brief, “known and measurable” changes are adopted in the rate year. WWD has presented ample evidence of these “known and measurable” changes²⁶, has provided written evidence as to the existence of the policy, and has shown the City is applying the policy on a non-discriminatory basis. Accordingly, the rate year cost provided in WWD Exhibit 1B, Schedule 1.2 should be accepted by this Commission.

A related issue is the Division’s assertion that the City and WWD are somehow the “same entity”²⁷. The Division continues that because they are the “same entity”, the policy may be “an attempt to shift costs to the water utility from other city departments”²⁸. This assertion is

²⁵ WWD Exhibit 3, p.2, lines 15-17.

²⁶ See, e.g. Commission Exhibit 1, Response to COMM 1-14.

²⁷ Division Exhibit 3, p.5, line 23.

²⁸ Id. At p.6, lines 102.

unfair and not supported by any record evidence. All evidence shows these are true costs in accordance with a policy which has been applied to other utilities. Further, this statement flatly ignores Commission precedent that a City and its water department are separate entities. In Docket 3485, the Providence Water Supply Board has been accepted by the Commission as an adverse party to the City of Providence with regard to these exact type of street opening issues. Accordingly, any implication that there is cost-shifting taking place is misguided.

IX. Exploring “Regionalization” was mentioned by the Commission in Docket 3512, is subject to management discretion and any refund would be prohibited retroactive ratemaking.

As the attached transcript from Docket 3512 shows, a Commissioner encouraged on the record “further meetings between Woonsocket and the Town of North Smithfield in terms of attempting to regionalize that water supply”. As the response to Commission Record Request 1-8²⁹ shows, time has been spent exploring the regionalization concept. As testified to by WWD, this has involved internal meetings, meetings with various town officials, and producing a draft document³⁰.

Further, the Division witness testified that it would not be “appropriate” to go back and collect \$53,000 from ratepayers³¹. The Division further testified that ratemaking is “prospective” and any attempt to recapture funds would violate the prohibition on retroactive ratemaking³².

WWD has used its management authority to explore regionalization, with the goal of reducing costs. The Supreme Court has consistently held that the broad regulatory power of the

²⁹ Commission Exhibit 1.

³⁰ Hearing Transcript, January 5, 2005, pp.131-132, lines 11-24 and lines 1-5.

³¹ Hearing Transcript, January 6, 2005, p.125, lines 2-10.

³² Id. at p.126, lines 19-22.

Commission ordinarily does not include the authority to dictate managerial policy. See, e.g., Blackstone Valley Electric Co. v. Public Utilities Commission, 543 A.2d 253, 255 (R.I. 1988). As United Trust Co. v. Nunes, 99 R.I. 501, 512-513, 209 A.2d 215, 222 (1965) has held, “ordinarily, the determination of what shall be expended in the areas [of executives salaries, expense accounts, and legal fees] is a function of management and should not be interfered with absent evidence tending to prove that the projected expenditures unreasonably and unjustly affect the far-paying public”.

All record evidence shows the expenditure does not unjustly and unreasonably affect ratepayers. First, it was made with the intent of reducing or mitigating rates. Second, as the Division testifies, the expenditure is minimal as compared to overall rate base³³. Finally, studying regionalization is consistent with the expressed desire of a Commissioner during an open docket.

It is well settled law that, subject to narrow exceptions, the Commission is prohibited from engaging in retroactive ratemaking and that rates must be prospective. See, e.g., In re: Island Hi-Speed Ferry, LLC, 852 A.2d 524 (R.I. 2004). These narrow exceptions relate to recouping extraordinary expenses incurred as a result of an unusually severe storm (Narragansett Electric Co. v. Burke, 415 A.2d 177, 179 (R.I. 1980)) and recovering an unforeseeable supplemental tax surcharge assessed by a city (Providence Gas Co. v. Burke, 475 A.2d 193, 197 (R.I. 1984)). There is no exception allowing for the reduction in rate base because of utility management exploring possible cost-saving opportunities. Accordingly, as both parties to this litigated docket agree, it would be improper to reduce rate base or otherwise penalize WWD for costs incurred to study regionalization.

³³ Id. at 134, lines 11-19. “only talking about \$53,000”

CONCLUSION.

WWD respectfully submits that the record evidence in this Docket clearly supports WWD's request for increased funding. This funding is necessary to continue the safe and reliable operation of the water system.

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STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

HEARING IN RE:

CITY OF WOONSOCKET WATER
DIVISION APPLICATION TO DOCKET NO. 3512
CHANGE RATE SCHEDULES
-----/

AUGUST 28, 2003
10:00 A.M.

89 JEFFERSON BOULEVARD
WARWICK, RI

BEFORE THE COMMISSION:

ROBERT HOLBROOK, COMMISSIONER PRESIDING
KATE RACINE, COMMISSIONER
CYNTHIA WILSON, COMMISSION LEGAL COUNSEL
ALAN NAULT, RATE ANALYST

APPEARANCES:

FOR THE WOONSOCKET
WATER DIVISION:

ADLER POLLOCK & SHEEHAN
BY: CRAIG EATON, ESQ.

FOR THE DIVISION:

LEO WOLD, SPECIAL ASSISTANT
ATTORNEY GENERAL



1 MS. RACINE: I don't know if anybody or
2 any group has commended you and your employees,
3 but I would like to. Knowing the area so well,
4 going to Woonsocket all the time, to it and
5 through it, it was a tough job; and it could have
6 been even more of a disaster because of
7 surrounding buildings and how it happened, ladies
8 and gentlemen, and how difficult it was to get
9 the trucks in there. And the big issue, I
10 happened to be at a cookout, was Woonsocket Water
11 going to be able to maintain the pressure, get it
12 to the fire, I don't know if there are any women,
13 so I'll say "fire people," and be able to keep it
14 under control. And you did it, and you did a
15 wonderful job. I think they ran the Water
16 employees night and day; did they not?

17 MR. MARVEL: Yes, we did.

18 MS. RACINE: And it's a very small
19 unit, but the issue was it could have been far
20 worse. And a lot of the water in my town, North
21 Smithfield, and I'm not even going to go there,
22 would encourage any further meetings between
23 Woonsocket and the Town of North Smithfield in
24 terms of attempting to regionalize that water

1 supply, which I think has been on the table, off
2 the table. I think it goes back to, Commissioner
3 Holbrook, there are political issues and no one
4 can seem to knock the wall down and make it
5 happen. I know you've been there for all of the
6 people that have approached in terms of that
7 activity; but my hat is off to you because it is
8 an old system. The fear was, what if we can't do
9 it, we're literally going to sit down and watch
10 Woonsocket burn. I know that I saw the Mayor on
11 television several times, and she commended all.
12 But I would like from the Public Utilities'
13 perspective, it was difficult and the smoke and
14 the conditions were incredible, so, thanks.

15 And the only other issue I have, and I
16 suppose this will cause the Division to throw
17 rocks at me, but I'm going to do it anyway, do
18 you think you've got enough money in this?

19 MR. MARVEL: There's no way we've got
20 enough money.

21 MS. RACINE: I would say, could you
22 definitely agree to be in within the next 12
23 months?

24 MR. MARVEL: That speaks to the