

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

HEARING IN RE:

DOCKET #3660

KENT COUNTY WATER AUTHORITY
APPLICABLE TO CHANGE RATE SCHEDULES

ARGUMENT OF

KENT COUNTY WATER AUTHORITY

TO THE

PUBLIC UTILITIES COMMISSION

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A

PREAMBLE

It need not be a struggle to focus attention on the political theatre attendant to the public comment sessions at the Public Utilities Commission and Coventry High School. The Commission is aware that save for three (3) members of the public, the public comment sessions were virtually monopolized by those in the employ of Centre of New England and their unrelated testimony was sinister, self serving, scandalous and surreptitious in order to create the "perfect storm" assault on the Kent County Water Authority and more particularly Timothy J. Brown. Concomitantly, a tawdry lawsuit was filed seeking millions of dollars during the pendency of these hearings against the Authority and Mr. Brown. As if that were not enough, Mr. Nicholas Cambio, the principal of Centre of New England threatened this writer with bodily harm on four (4) occasions juxtaposed with the opening of the Coventry High School proceedings. It is indeed unfortunate that comments by those in interest to Centre of New England were widely reported and have tended to have a negative effect on these proceedings, especially since their goal was to discharge their ferine and boorish bombshells without having a scintilla of interest in the rate hearing. This was evidenced when Commissioner Holbrook invited and encouraged those who commented to stay and hear testimony (T. 58), but if one were unfortunate enough to be in the path of the exit, a trampling would have occurred. Thus, the Hearings on the merits began and ended without the presence of any of those in the Centre of New England employ.

Kent County Water Authority would ask the Commission to dismiss the Centre of New England obvious attempt to subvert these proceedings as vengeance for the Kent County Water Authority having the temerity to regulate the water over which it has been entrusted for the public good as opposed to being lenient and yielding to a bullying and aggressive contractor and, or, his minions.

The Kent County Water Authority sympathizes with the constraints on the municipalities and their leaders who spoke during the comment phase but the Commission need not be reminded that the Authority cannot subsidize those particular municipal budgets especially when all are aware that municipal taxes increase on an annual basis which eclipse the increase sought here. The Authority can only seek increases through this Commission. However, one must take exception to the rather inappropriate diatribic attack from Coventry Councilman Sanetti on Mr. Brown who is the favorite target of Centre of New England.

This Commission and the Division is well aware of the dedication, skill and ability of Mr. Brown to direct the Kent County Water Authority now and into the future and in fundamental fairness, it should decline to consider these obvious attacks as self serving and malevolent and above all else should have no place in these proceedings or deliberations.

B
ARGUMENT

The Kent County Water Authority filed this abbreviated rate request in January, 2005 with a revenue requirement of \$15,977,500.06 which includes a twenty-five (25%) percent overall increase of \$3,172,665.00. The parties are in agreement that there is a need for this overall increase in revenues and that the same is appropriate. The requested revenues are critical to the financial solvency of the Authority and its ability to provide water to its existing and potential customers and its ability to continue to meet the covenants it has contracted with the bond holders.

The areas of concern in this rate case are discussed in these following pages.

1. Restrict or not to Restrict?

The most generic difference between the parties, is that the Division has suggested that all amounts of the \$3,172,665.06 increase exceeding \$2,290,703.00 or \$881,962.00 should be restricted and used only for additional IFR funding. However, the difference in the Kent County Water Authority position and the Division concerning IFR Funding is \$680,243.00 (Surrebuttal Crane Revised ACC-1S-Exhibit 8) is crucial to the financial health of the Authority and that fact cannot be overstated. This difference between The Authority and the Division should not be taken to imply that there should be a diminishment of the 25% rate increase which is not in controversy.

A disturbing difference proposed by the Division is the elimination of the 1.5% operating revenue allowance (also known as the operating reserve allowance) which

would reduce the cost of service by \$118,524.00 and would reduce the claimed operating expenses by \$155,245.00 of the operating revenue allowance. It is apparent from the Hearing testimony that the Authority is in dire need of this 1.5% operating revenue allowance to cover the increase of insurance, pension, and employee costs which no one can deny will increase in the rate year (Woodcock rebuttal testimony Page 10). The Division has opined there should be no operating revenue allowance despite the possibility that the Division is incorrect in its posture. The Division relies on Docket No. 2098 dated December 23, 1993 which predates any of the current Commissioners and the Division urges that this Commission abandon and bypass its recent rulings in Woonsocket, Newport and Pawtucket and not provide Kent County Water Authority an operating revenue allowance. If any of the Division estimates prove incorrect, there would be no contingency provisions and Kent County Water Authority would continue to run deficits for the rate year. This was confirmed by the Fiscal Analyst, Thomas Massaro's question to Mr. Brown of Kent County Water Authority and Mr. Brown's answer:

“Actually, the reporting that Kent County does to the Commission periodically every six (6) months indicated that on a June 30th 04 the Authority was approximately, I think, \$880,000 in the hole on a cash operating basis?” (Brown T-134)

which was confirmed by Mr. Brown who stated:

“We are actually short the IFR account if we have insufficient funds...there is no way to make it up otherwise unless we have a good sales year.....” (Brown T 134-135).

Timothy J. Brown stated, in further answer:

“Well, we are still running short, or course, of those rates, so I suspect we will yes. We may be getting tight again with an IFR payment for this month. We may have to short that as well if we cannot fund it because of it.” (Brown T-135).

The Division witness, Ms. Andrea Crane, astonishingly and incorrectly implied to the Commission that the O & M reserve fund required by the Authority revenue bond trust indenture is available to meet unanticipated short fall without consequences. (Crane surrebuttal testimony page 11) Ms. Crane admitted that she is not an expert on this bond resolution nor its terms and conditions (Crane T-73-75). Kent County Water Authority witness, Mr. Woodcock, is such an expert and has told the Commission that the O&M Reserve is NOT a substitute for the operating revenue or reserve. Mr. Woodcock's testimony has been verified by bond counsel. The Division claim that the Authority can use the O&M Reserve albeit required by the bond covenants to be in place, is not based on credible expert testimony and is incorrect as Mr. Woodcock stated:

“The resolution is very clear and I actually talked to bond counsel yesterday about this very question. And it is section 5.14. It says, ‘except as provided in another section of the resolution, all income from investments in any fund or account shall accrue to and be deposited in such fund or account and all losses from investments shall be charged to that fund.’” (Woodcock T-242-243)

Division witness Ms. Crane certainly does not have the Bond expertise of Mr. Woodcock in this regard since she has not assisted an authority or non-investor-only utility directly in issuance of debt. (Crane T-73) Ms. Crane agrees with the fact that the O & M reserve fund is also quite different in that this fund or account may not simply be used up if ever insufficient, the funds must be repaid. (Crane T-70) She has never assisted in drafting any of the documents for general obligation bonds (Crane T-74) and

has not been involved in the actual workings of a bond issue and never advised a client specifically on issuing bonds. (Crane T-75) Again, she stated that she had no reason to disagree with Mr. Woodcock's testimony that the 25% O&M operating reserve required by the bond covenants must be paid back in that fiscal year. (Crane T-75) It is obvious through this hearing and others involving Mr. Woodcock, that this Commission can take administrative notice of the fact that Mr. Woodcock has considerable expertise in the field of bond issues. The Commission should therefore give little weight to the Division posture that the O & M reserve fund can willy-nilly be used as a substitute for the 1.5% operating revenue allowance. The Authority has clearly established that the O & M reserve fund must be fully funded at the conclusion of each fiscal year by the Bond Covenants and Indenture. There is never any advantage for a public entity to rob Peter to pay Paul.

2. The Cost of Water

The Division has asked the Commission to accept the premise that Kent County Water Authority will have an increase in sales to its customers yet have a decrease in the amount of water it will purchase to provide these increased sales. If the Division was attempting to build a syllogism, it would be a fallacy, or, at best, a non-sequitor. The discrepancy becomes apparent when viewing the corrected ACC-7S (Kent County Water Authority Exhibit 5), since the Division pretextually attempted to reverse into a purchase water value using the "unaccounted for water" calculation method provided in the Authority annual report. The Division did not use the completed numbers and it employed unadjusted sales used in the annual reports:

"...there were the unadjusted numbers, the amounts that are in the annual report prior to the billing adjustment...those are the numbers...she should be comparing either the adjusted numbers to the adjusted or the unadjusted to unadjusted numbers." (Woodcock T-182).

This was the "apples and oranges" scenario and was explained in the surrebuttal nos. 4 and 5. If one would review the Kent County Water Authority Exhibit 5, correcting the Division results and properly explained that there is an increase in expenses of \$115,185.00 and not the decrease of \$120,389.00 as enunciated by the Division, again, a difference of apples and oranges of more than a \$235,000.00 swing. (Woodcock T-179). This number was adjusted later in the Division Revised ACC-7S to \$80,091.00. (Crane T-8-10) where Ms. Crane in referring to Mr. Woodcock and Kent County Water Authority Exhibit 5 stated:

"He is absolutely correct that I made a mathematical error in my initial schedule and instead of taking my performance sales and multiplying by 10%, I should have taken my performance sales and divided by 90% as he indicated on Friday, he is certainly correct about that and I would accept that part of his adjustment. I have prepared Revised ACC-7S which I believe you have copies of." (Exhibit 7)

The Division numbers paint a much rosier scenario to this abbreviated rate filing than is realistic.

3. Maintenance of Mains Expense

In the case of the Division suggesting adjustments to the maintenance of mains of \$55,388.00 (ACC-8S) and expense of \$30,528.00 (ACC-9S), the Division seems far more concerned with the process of the hearing rather than examining the reality. The Division posture is that anything brought up in live testimony during these proceedings is not to be considered by the Commission. (Crane T-55-56) That proposition is not in

keeping with American jurisprudence and it begs the question why have we live testimony at all?

Mr. Brown explained that the test year increase that had the Division concerned was simply due to the allocation of labor costs.

“Well, maintenance of mains is a labor category where we put part of our labor force depending on what they do each and every day. That fluctuates along with the maintenance of the hydrants that we have as part of our line item.” (Brown T-65)

“The maintenance of mains is higher as indicated by the testimony. It is because we are doing a lot more of the maintenance of mains. We have a full compliment of staff now and if it is cut from one, it would have to be added to another in order to keep the same labor costs that we have, so by cutting one and not adding it to another category, then we all of a sudden have a hole covering that labor. So we firmly believe that the labor cost should remain as it. We are doing more maintenance of mains because of the system, using more of our crews for some of that maintenance. It also depends on ruptures, breaks and so forth that you have and nobody can predict that, but if it isn't in the maintenance of mains, it would then go into the maintenance of hydrants or something elsewhere the staff would be working" (Brown T-66).

Cutting this expense would be tantamount to cutting labor costs. There was no testimony from anyone to suggest this, yet this is exactly the import of the Division posture.

4. Office Supplies Expense

It was explained in the test year increase in office supplies, the Authority Newsletter represented the bulk of that increase. Ironically, the Newsletter was initiated in response to Commissioner Racine's concern that the Authority needed to communicate more with its customers.

In fact, Timothy J. Brown testified that the Commission had addressed the issue during the last rate filing in 2001 that communication between the Board and the customers was essential. The Board took that recommendation seriously and determined that the best communication device for the customer would be the newsletter which would be sent out three times per year for a cost in office supplies at about \$24,000.00. (Brown T-65) The Commission should give little weight to the position of the Division on this point in that it would be telling the Authority to stop providing system information to its customer through the newsletter, albeit, it was at the behest of the Commission that it was instituted. Mr. Brown testified concerning the importance of the content of the newsletter:

"....the current newsletter.....will have articles written about Big River Reservoir...about the shortages....odd/even watering....previous articles have dealt with conservation...difficulties with Department of Environmental Management and issues of that nature" (Brown-T-171).

Ms. Crane later testified that she did not have a problem with the Commissioner's recommendation and the newsletter, but she was more concerned about the process of the Rate Hearing and learning about the newsletter during the live testimony phase of these proceedings. (T-52-55) As an aside, this writer, recently, had a chance encounter with former Commissioner Racine who confirmed that the newsletter was at her suggestion.

The other relatively minor changes in this category can be generally attributed to overall increases which all businesses are experiencing, albeit this information was inadvertently absent from the pre-filed testimony. However, the purpose of live testimony always has at its end, the ability to correct fallibility and that evidence should

not be reduced or precluded on that technical basis as argued by the Division. (Crane T-55-56)

5. Chemical Expense

The Division posits that the reduction in chemical costs would be based solely on their belief that the chemical costs are not influenced by the recent rise in energy expenses. Mr. Woodcock's rebuttal testimony (page 6) and in his live testimony (Woodcock T-213) reference a US Governmental document in the May 2001 report of the National Energy Policy Development Corporation which stated that the chemical manufacturing industry is one of six (6) industries that consumed seventy-five percent of all the industrial energy. (Woodcock T-213).

"Six industries consume three-quarters (3/4) of all industrial energy lumber and paper, chemicals, petroleum refining, primary metals, food processing, and stone, clay and glass." (Woodcock T-214)

Additionally, Mr. Brown testified that fuel surcharges were being seen. (Brown T-70) For example,

"...we are beginning to see some increases in costs as far as fixed charges for delivery. One of our chemical deliveries even went from \$25.00 to \$40.00. I suspect we will see more depending on the crunch that is in the energy business right now." (Brown T-70)

6. Lobbying Expense

The lobbying costs for Kent County Water Authority are certainly not exorbitant, especially when one factors in the thousands and thousands of bills which are filed each and every year. The economic and fiscal restraints on a small utility such as Kent County Water Authority militate against an ill-trained, in-house person attempting to be

a professional lobbyist. Although there may be philosophical differences as to whether lobbyists in general are necessary, personal bias of an expert has no place in these Hearings and Ms. Crane has demonstrated such a bias. Ms. Crane testified that although she has not been a registered lobbyist (Crane T-28), never drafted any legislative bills (T-30) and has no expertise in reading bills (Crane T-30) and that absolutely agreed that much paper is generated by any legislative body and about the frustration of attendance at any legislative body for a bill and after spending hours only to learn that the hearing had been continued for several weeks (Crane T-31) and that it would be difficult management for anyone to take time off during the work week to sit at the legislative prerogative and pleasure to determine whether or not a bill will get heard (Crane T-31). More to the point, Ms. Crane who has obvious limitation concerning lobbying and as stated infra has a personal bias proclaimed that she had testified in approximately 200 utility cases in approximately 18 states and has virtually in everyone of those cases recommended against the inclusion of lobbying costs (T-33). Oddly, none of those cases in which she testified involved a non-investor public utility such as Kent County Water Authority. Further, there was no testimony that lobbying costs are inherently evil. She testified that she was unaware of the lobbying laws in the State of Rhode Island and unaware of any of the penalties assessed by the Ethics Commission and/or the Secretary of State for violating lobbying laws. (T-33) In fact, Chairman Germani stated:

".... lobbyists serve a very important function of bringing attention to their concerns and that the firm engaged by Kent County Water Authority is the premier lobbyist firm and that they perform a very important function and that the difference between a non-investor owned and an investor owned public utility is that there is no stock holder equity." (T-48)

Commissioner Holbrook stated that he did not have a problem with lobbyists under certain circumstances but that it was disconcerting that public interests have to be brought up by lobbyists. Additionally all other rulings by the Commission against lobbying costs were in investor-owned public utilities which the Authority is not and Kent County Water Authority has the lowest paid lobbyist from the Tillinghast firm by special arrangement (Crane T-40).

7. Water Sales Revenues

Another substantial and critical difference between the Division and the Authority is the difference in estimated water sales for the rate year. The Division has proposed two adjustments due to presumed new sales caused by customer growth.

Customer growth does not ensure new sales. In fact, Mr. Woodcock clarified this fact when he referred to the link between customer growth and sales growth and said:

“... and you can go back to the prior dockets and all the annual reports and it will tell you just about every year, and I think it is probably every year, there has been a growth in the number of residential and I believe non-residential customers. They have had new customers every year. Has that automatically been an increase in consumption? It sure hasn't if you look at what actually happened. There have been years when it has gone up and there have been years when it has gone down. There were increases in customers in 1997 and consumption went down, there were increases in 1993 and consumption went down, there were increases in 2004 and consumption went down.” (T-188)

and he further stated:

“That just adding customers doesn't mean, and I hope that the commission doesn't take this as something that is gospel, increasing customers doesn't mean increasing sales and think this exhibit was put together to show that as well as a fallacy of using three year average over time.” (T-188, 189).

In referring to Exhibit 6 (T-183-189) the evidence in this docket as shown in both the Division surrebuttal testimony, (Crane T-8) and Kent County Water Authority Exhibit 6 demonstrate that retail water sales are not directly related to the number of customers as the Division projects. That despite an annual growth in customers the retail numbers have dropped in multiple years.

Additionally, other factors such as conservation have and will continue to interfere with sales. Conservation is important but results in less revenues.

(Brown T-1152).

Mr. Brown continued:

"Higher price - that is a double edged sword with conservation. We all know it, however, I think in the long run I truly believe that conservation is a better way to go for the customers and will not require infrastructure increases such as tanks, booster stations or new sources. Let's have a sustainable conservation program which actually generates extra supply, if I can call it that, it has to be, one, operational and it has to be proven over the years, it has to go through a semi—or drought period in order to be a viable alternative and this is done throughout the country and many other areas where they have actually utilized conservation for additional supply or actually their only supply." (T-152-153)

The Division has estimated rate year sales based on a simple average of three fiscal years and while the Division has revised its estimates to correctly account for the difference between adjusted and unadjusted sales, that at least one and possibly two of the three years, the Division calculations used are out of line and do not represent reality and do not represent normal sales.

The Division opines that weather and temperature are the most significant factors impacting sales but made no showing that the years that it used in its average are

normal. That in Kent County Water Authority Exhibit 6, it is clear that these in the three years used by the Division are two of which are the highest years since 1999.

Kent County Water Authority Exhibit 6, demonstrates that the Division proposed method of using a three year average to estimate sales always results in values that are substantially different and the Exhibit 6 demonstrates the absolute percentage difference or how much variation there is in each year. The Division method is off by 3.5% per year. A value that is more than 1.5% of the operating revenue allowance on total revenues. Division Exhibit No. 9 reported the same percentages as pluses and minuses. Even this exhibit shows on average the Division method results of sales projection that is nearly 1% higher than actual sales.

Pages 4 and 5 of the Crane surrebuttal testimony compare the adjusted test year sales to the unadjusted sales for the first nine months of FY2005 and compare the 9 month totals and concludes that the actual sales were 5.25 higher than the test year. If the adjusted to adjusted comparisons were made, the Division testimony actually would show that the Authority use of test sales years for the rate filing is correct. Using unadjusted monthly sales for both the test year and FY 2005 results in practically no difference and the test year is only .05 different, indicating that the test year was certainly representative of the following current year. (Woodcock T-178)

Mr. Woodcock in explaining Exhibit No. 5 Correction to Purchase Water Expense:

“...we saw the Division surrebutal testimony on the derivation of the purchase water cost, just made no sense whatsoever with their projection of retail sales going up and purchase water coming down and it seems just inherent to us at least just looking at calculations, there is something wrong with it.” (Woodcock T-175-176)

"...Column AAC-7S are the ones wherein Division surrebutal testimony. Essentially what the Division has done is try to determine what the amount of purchase water is by backing into it starting with sales and then applying some unaccounted for water percentages....."

Mr. Woodcock continued:

"Now there has been a lot of discussion about unadjusted versus adjusted and it's critical because the unadjusted numbers are what ends up actually getting billed to the customers. The unadjusted is the first billing. People call and they say you read my meter wrong, there was a mistake, there was a leak, you give them credits, whatever it's for, there's adjustments made to bills, those adjustments amount to about five percent (5%); they reduce the amount of those initial unadjusted billings by about 5%." (Woodcock T-178)

The additional 5% would be the difference from \$4,147,956 which the Division calculation showed to be \$4,355,000 or say an additional five percent (Woodcock T-179).

"Now, if I go through that and take the unadjusted sales, add in the customer growth adjustment sales which the Division did, and we don't agree with the sales for resale, add those up, and divide by .9, rather than just taking ten percent of that, go through and come up with the numbers just follow the calculations through and instead of \$120,000 reduction in the purchase order, it's really \$115,000. (Woodcock T-178). So therefore, the three year average is grossly overstated" (Woodcock T-180).

To scrutinize the Crane surrebutal (Page 4 and 5), we know it is an "apples and oranges" comparison using unadjusted calculations. Mr. Woodcock's testimony is that there is a .05% difference which demonstrates that in the test year numbers were indeed the real numbers and in fact, through March of 2005, that's exactly within .05%, which is what happened in the ensuing year. These numbers are representative of what is real in the next 9 months that we have got here. The test year was not an

unusual situation, in fact the numbers are exactly the same as what has happened thereafter. (Woodcock T-182-83).

Mr. Woodcock continued while looking at Exhibit 6, that:

“Mr. Wold ran through the difference between the Division and the Authority, and the very first item that he mentioned was sales of that \$880,000 difference. That sales difference is the bulk of it, it is over \$400,000 of it. It flows through the purchased water, it flows through some chemical adjustments that the Division made. When you put them together, it is probably \$500,000 or so of the impact in this \$880,000 difference that we have. The sales are critical to this whole thing.” (Woodcock T-184-85). “And I think it also relates very strongly to the operating revenue issue...”

Mr. Woodcock stated that what this chart shows it that what over the last 11 years the sales have been for Kent County Water Authority and it shows that taking the average in 2002, 2003, 2004 and the Division has suggested is taking 2002 and 2003, two of the most....the highest years that there have been in the last years of the Water Authority. That is showing total sales up (Woodcock T-185). The Authority believes that this Division testimony of "apples to oranges" is an improper comparison

C

CONCLUSION

The rate increase sought of twenty-five (25%) percent is appropriate and agreed to by the parties. The Authority has shown that the restriction of funds in the amount of \$881,962.00 to the IFR account is unwarranted. Similarly, the proposition that the O & M Reserve Fund should take the place of operating revenue allowance is against the covenants of the Bond Indenture and would amount to illegality. The Authority asks that the Commission disregard the posture of the Division in this regard.

The Authority has demonstrated that the posture of the Division in regard to cost of water is ill-founded and logic dictates that the cost of water cannot decrease. One only has to be aware that the Providence Water Supply Board has already filed for a rate increase during the pendency of this matter. The Commission should disregard this Division request.

The maintenance of mains as shown by the Authority, is a labor issue and those fixed expenses cannot be eliminated. The Authority asks the Commission to keep the same in place.

The Authority provided answers to the office supplies issue in that the newsletter, which accounted for the bulk of the expense, is necessary and for the education of the customers in areas such as conservation and future services. The chemical costs and the lobbying expense have also been adequately defended by the Authority and should remain as is.

The posture of the Division concerning water sales revenues is incorrect in that there is no nexus between customer growth and increased sales. This is especially true due to water being a finite resource which must be managed with conservation.

Thus, the Kent County Water Authority asks this Commission to approve this rate request intact.

Respectfully submitted

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