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October 31, 2005

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

Re: Pawtucket Water Supply Board – Docket No. 3674

Dear Luly:

As you know, this office represents the Town of Cumberland.

Enclosed for filing in this matter are an original and nine copies of The Town of Cumberland's Post-Hearing Brief in this matter.

If you have any questions, please feel free to call.

Very truly yours,

Michael R. McElroy

MRMc:tmg
CU2:Massaro16
cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PAWTUCKET WATER SUPPLY BOARD : DOCKET NO. 3497

POST-HEARING BRIEF OF THE TOWN OF CUMBERLAND

INTRODUCTION

In light of the fact that Pawtucket Water Supply Board (PWSB) has withdrawn without prejudice its request for a special surcharge (rate differential) for Cumberland's wholesale and retail ratepayers, Cumberland files the following post-hearing brief directed only to the remaining issues in this case.

1. Cumberland adopts the Division's positions except as set forth in this post-hearing brief.

Cumberland generally agrees with the final positions of the Division as set forth in the surrebuttal testimony Andrea C. Crane, and her testimony at the hearings, except as stated below in this post-hearing brief.

2. Consumption/Revenue

Cumberland agrees with the Division that in this case it is appropriate for the Commission to use either a 3-year or a 5-year average to project rate year consumption. Cumberland also agrees with the Division's suggestion that the most recent data possible,

including all available data from the summer of 2005, be included in the calculation of the average.

Cumberland does not believe that a new mechanism should be put into place in this docket that would allow PWSB to get an "automatic" rate increase if its revenues do not meet projections. Cumberland believes that no rate increase should be granted without the Commission looking at both the revenue and the expenditure side of the equation.

On the other hand, a rulemaking docket could be opened by the Commission to explore the issue of revenue shortfalls resulting from consumption projections not being met by regulated water utilities in the State of Rhode Island. It may be possible to establish a truly abbreviated, accelerated process for all water utilities that looks at both revenues and expenses. Cumberland does not believe, however, that this should be done in the course of a single rate docket, but should be done by way of a rulemaking with notice to all water utilities if the Commission wishes to consider addressing this issue.

Cumberland also notes that during the hearings, it was conceded that the wholesale consumption of Cumberland Water Department was not properly reflected in PWSB's filing, and that the wholesale consumption figures set forth in the testimony of Christopher Collins, Superintendent of the Cumberland Water Department, are accurate. Cumberland therefore respectfully requests that the wholesale consumption figures set forth by Mr. Collins, as agreed to with only de minimus differences by PWSB in the testimony of Mr. Bebyn at the hearings, should be utilized in projecting rate year consumption.

3. Operating Reserve

Cumberland agrees with the Division that the operating reserve should remain at 1.5% of PWSB's operating expenses. This has been the traditional calculation in recent years. This Commission has recently reaffirmed its adherence to the 1.5% operating reserve multiplied by operating expenses (not total revenues) in the recent Kent County Water Authority docket. Cumberland suggests that the 1.5% should apply in this docket as well.

PWSB's request for an unallocated operating reserve of 5% of total revenues is much too large. It would be unfair to ratepayers. It would result in a large portion of the rate increase being granted for unspecified purposes and without any controls.

Any argument that some portion of a larger than 1.5% operating reserve could go into a restricted account is essentially rendered unworkable by virtue of the fact that PWSB has freely admitted in these hearings that it has not been fully funding its restricted accounts. In fact, to date, PWSB has not been able to actually demonstrate to the Commission the existence of the restricted funds in all of its restricted accounts. If PWSB fails to properly fund all of its restricted accounts, PWSB is essentially taking money that is to be set aside only for specific restricted purposes and is utilizing that money for general, unrestricted purposes. This is the exact opposite of the what was intended by restricting the funds. Both this Commission and the Supreme Court have harshly penalized utilities that utilize funds for general operations that are intended for restricted accounts. See, for example, Providence Water v. Malachowski, 624 A.2d 305 (RI 1993), and Providence Water Supply Board PUC Docket No. 2022.

4. Salaries and Wages

Cumberland generally supports the Division's position in this matter. However, Cumberland is concerned about certain issues. First, one of the two union contracts for PWSB has expired. Its renewal is only under negotiation. No time estimate could be given for when the contract would be renewed. Accordingly, Cumberland submits that the proposed wage increase (if any) for these union employees for the rate year is not yet "known and measurable." It was even admitted by Ms. Marchand at the hearings that there have been years in which there were no union increases when the contract was renewed (tr. 9/13/05, at 109). That may happen again.

Accordingly, Cumberland submits that the portion of the requested rate increase applicable to increases for those union employees whose contracts have expired should be denied by the Commission because the increases are not known and measurable. Alternatively, the requested increase in funding for those employees could be placed into a "first dollar"¹ restricted account and not released until PWSB reports back to the Commission that a new union contract has been executed and PWSB demonstrates that the funds are needed to pay increases.

Second, the acquisition of the Central Falls system is far from a "done deal." Only a memorandum of understanding exists. A number of important (and difficult) approvals need to be obtained. In fact, the acquisition may never occur. Yet PWSB has requested full

¹ "First dollar" restricted account funding would mean that to the extent permitted by its existing bond covenants, PWSB would be directed to fully fund the restricted account with the first dollars it receives from ratepayers each month; not with a percentage of what is left over after general unrestricted expenses are paid.

funding for five additional employees to operate the Central Falls system, plus funding for a truck lease, tools, and transmission and distribution, all totaling approximately \$427,000 per year (tr. 9/13/05, at 112).

Because of the tentative nature of the memorandum of understanding (Ms. Marchand testified that it was only a "possible purchase" (tr. 9/13/05, at 79)), Cumberland submits that the \$427,000 funding for the employees to operate the Central Falls system (and the related expenses) should be denied because the expense is not yet "known and measurable." In the alternative, the \$427,000 Central Falls funding could be placed into a "first dollar" restricted account until such time as PWSB is able to demonstrate in a filing with the Commission that the contracts have been signed, the approvals have been obtained, and the acquisition of the Central Falls system has been completed.

Third, the Central Falls closing is not even anticipated until July 2006, which is half way through the rate year. Yet a full year's worth of Central Falls expenses has been requested in this rate case. The Commission therefore may want to consider cutting the Central Falls request in half, especially in light of the fact that PWSB has indicated that it will be back before the Commission with another rate case very shortly, at which time the full amount could be put in if the Central Falls acquisition has been completed.

5. Calgon Litigation

Cumberland suggests that due to the uncertain nature of the Calgon litigation and the approximate \$73,000 request regarding that litigation, that it is not truly a "known and

measurable" expense. Therefore this funding should either be rejected or should at a minimum be restricted.

6. Restricted Accounts

Cumberland supports the efforts of PWSB to get their restricted accounts in order. In light of PWSB's accounting problems, which were still not resolved by the time of the hearings (especially with regard to the WTP restricted account), Cumberland respectfully suggests that the Commission may want to consider additional controls on PWSB's restricted accounts, to the extent allowed by PWSB's bond covenants. For example, PWSB could be required each month to report to the Commission and the parties on the status of each of its restricted accounts. This report could include both the amounts allocated to the accounts on PWSB's books, as well as actual expenditures from each account and the actual cash balances in the bank for each of the restricted accounts.

Respectfully submitted,
Town of Cumberland
By its attorney



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CERTIFICATE OF SERVICE

I hereby certify that on the 31ST day of October 2005, I mailed a true copy of the foregoing by first class mail to the following:

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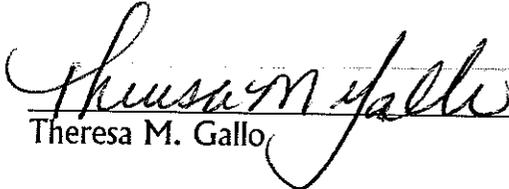
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