

REBUTTAL TESTIMONY
of
PAMELA M. MARCHAND, P.E.
before the
PUBLIC UTILITIES COMMISSION

for
PROVIDENCE WATER

DOCKET # 3832

August 2007

PROVIDENCE WATER SUPPLY BOARD
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PAMELA M. MARCHAND, P.E.

1 **Q. Please state your name and title.**

2 A. Pamela M. Marchand, P.E., Chief Engineer & General Manager of the Providence
3 Water Supply Board.

4

5 **Q. Are you the same Pamela M. Marchand who has previously filed direct**
6 **testimony in the Docket?**

7 A. Yes.

8

9 **Q. Have you had an opportunity to review the pre-filed testimony submitted by**
10 **the Division and the Kent County Water Authority, et al?**

11 A. Yes. I have reviewed the testimony submitted by Mr. Catlin and Mr. Mierzwa on
12 behalf of the Division and the testimony submitted by Mr. Woodcock on behalf of
13 the KCWA.

14

15 **Q. What issues will you address in this rebuttal testimony?**

16 A. I would like to address the following issues raised by the Division and the
17 KCWA:

- 18 - Operating revenue allowance
19 - Administrative and General Contract Services
20 - Proposed adjustment to Engineering Related Expense
21 - Proposed adjustment to Legal Contractual Services

22 I would also like to discuss the issue of the tax refund by the City of Cranston that
23 will be further addressed in response to Data Request Set Number Five (5) of the
24 Division.

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1 **Q. Why are you addressing the issue of the Cranston tax refund in your rebuttal**
2 **testimony?**

3 A. For several reasons, it is appropriate to enter the tax refund into evidence in this
4 rate filing at this time: on August 15, 2007, the Providence Water Supply Board
5 voted to accept a settlement agreement as negotiated with the City of Cranston for
6 refund of contested taxes; the Division issued a data request (set no. five (5))
7 based on the newspaper articles discussing the fact that the City of Cranston has
8 recently agreed that a refund is due Providence Water; and it is included in my
9 discussion regarding adjustments to engineering and legal contractual services.
10 Providence Water annually contested taxes charged by the City of Cranston for
11 2003 through 2007. A Judgment was entered by the Superior Court in Providence
12 Water's favor on December 8, 2006, requiring the City of Cranston to refund the
13 taxes paid on tax exempt facilities pursuant to Public Law 1986, Chapter 84,
14 which amends Section 18 of Chapter 1278 of the Public Laws of 1915 entitled
15 "An Act to furnish the City of Providence with a supply of pure water", which
16 states that "the city of Providence shall be exempt from local taxes on all pipe
17 lines and other water appurtenances installed, located, or laid for the purpose of
18 serving areas not served with water by said city of Providence prior to April 27,
19 1931".

20 After the Judgment was entered, the City of Cranston and the Providence Water
21 Supply Board negotiated an agreement regarding the facilities considered taxable
22 and those exempt, the tax rates applicable, and the amount to be refunded. Based
23 (among other things) on the timeliness and cooperation of the City during these
24 negotiations, the willingness of the City to issue a judgment bond in order to pay
25 the total refund amount in a lump sum in the near future, and to forgo any further
26 legal action by not appealing the Judgment, the Board of Providence Water agreed

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1 to a lump sum payment that includes less than 12% interest (as listed in the
2 Judgment) for a total amount of \$1,508,362 (with added interest of \$216.77 per
3 diem from 8/16/07 until payment is made).
4

5 **Q. Division Data Request 5-3 requests " Please state how Providence Water**
6 **proposes to treat any payments(s) it receives from the City of Cranston as**
7 **part of the settlement for the purposes of setting rates." Do you wish to**
8 **address this in your rebuttal testimony?**

9 A. Yes. Providence Water requests that this refund, when received, be placed in a
10 restricted account to fund further expenses incurred in the contesting of tax bills,
11 or larger than anticipated increases in tax bills. To date, this has been a costly and
12 time consuming process, with over \$550,000 spent to date. (See Providence
13 Water response to the Division's 5th set of data requests).
14 These "one-time" costs have become overwhelming because recent tax litigation
15 actions have required extensive legal assistance, as well as large fees for
16 engineering and professional assessments for utility facilities and property,
17 including appraisals. There are still a number of outstanding cases (i.e., the
18 Scituate case in particular). (See Providence Water response to Commission 3-
19 18).
20

21 **Q. How does this relate to the Administrative and General Contract Services for**
22 **engineering and contractual legal expense?**

23 A. Most of the expenses related to the tax cases have been charged to these accounts.
24 FY 2007 had a very significant increase in expenses (see Div 5). In order to agree
25 with Mr. Catlin's reduction of engineering and contractual legal expense, we
26 would need to create a separate fund in order to continue our ability to contest

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1 these unfair tax bills. At this time, it is assumed that the Scituate tax cases will be
2 fully litigated in the Superior Court and then appealed to the Supreme Court. In
3 the Scituate cases, expenses are expected to be high for legal and professional
4 representation (including engineering and appraisals), and to take several years to
5 fully resolve. Even though the process is costly, it can have high rewards, as
6 evidenced by the Cranston refund. The Scituate tax cases alone have a possible
7 return of over \$14,000,000.

8
9 **Q. What is your response to Mr. Catlin and Mr. Woodcock's pre-filed direct
10 testimony regarding Providence Water's operating revenue allowance
11 request?**

12 A. Mr. Woodcock agrees that the 3% allowance requested by Providence Water is
13 appropriate if 1.5% is utilized for expense fluctuations as in past cases, but he
14 recommends the restriction of an additional 1.5% for shortfalls in allowed
15 revenues.

16 Mr. Catlin's testimony pertains to the use of the requested 3% operating revenue
17 allowance for fluctuations in expenses only. This is a major issue for Providence
18 Water, as evidenced, for example, by the recent RI DEM consent order to
19 Providence Water to provide a pH study on the effluent discharged from the
20 settling basins. A reduced study, to be performed by Pare Engineering, will cost
21 \$41,700. To fully comply with the DEM requirements will cost double that
22 amount. Providence Water can only fund these one-time expenses from the
23 operating revenue allowance, and it is certainly an "unanticipated" expense.

24
25 Mr. Catlin proposed several methods of calculating the operating revenue
26 allowance. In one proposal, he argues that should Providence Water be granted

1 the 3% allowance, then an inflation adjustment should not be considered in the
2 rate filing. However, in response to Commission 3-17 the filed amount for
3 inflation was 2.5%, whereas the actual expense increase during FY '05 to FY '06
4 was over 6%.

5 However, in this filing, Providence Water also intended for the 3% in reserve to
6 include fluctuations in allowed revenue. Providence Water would like to propose
7 a recommendation that may resolve all of the issues raised:

8 - Providence Water be allowed an operating revenue allowance of 3% on total
9 projected operating expenses (less miscellaneous revenue) to be applied as
10 follows:

- 11 1. Since Providence Water's restricted accounts currently amount to 41.03%
12 of total operating expenses (see WEE-1), the 3% operating revenue
13 allowance times 40%, or 1.2% will be placed in a separate restricted
14 account to cover shortfalls in allowed revenues in order to fund
15 Providence Water's restricted accounts.
- 16 2. The remainder of the 3% times 60%, or 1.8%, will be applied to
17 fluctuations in expenses and shortfalls in allowed revenues for operating
18 expenses.

19
20 **Q. Does this conclude your testimony?**

21 A. Yes.