

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

**IN RE: CITY OF NEWPORT WATER DIVISION)
 APPLICATION TO CHANGE RATE) DOCKET NO. 4025
 SCHEDULES)**

**POST-HEARING BRIEF OF THE DIVISION OF PUBLIC
UTILITIES AND CARRIERS**

During the May 27, 2009 hearing in the above-entitled matter, the City of Newport, Utilities, Water Division (“NWD”) submitted Exhibits 15 & 16 reflecting the revised Rebuttal Testimony of NWD and the most current position of each of the other parties in the proceeding. As amended, NWD Exhibits 15 & 16 reflect the following areas of continued disagreement between the Division of Public Utilities and Carriers (“Division”) and the Newport Water Division (“NWD”): (i) Motor Vehicle Fuel Expense, (ii) Amortization of Cost of Service Study Expense, and (iii) City Services. With respect to each area of disagreement, the Division continues to rely on the Direct and Surrebuttal Testimony of Thomas S. Catlin that was filed in this proceeding or elicited from Mr. Catlin at hearing.¹

Without reiterating what is contained in those testimonies, the Division provides additional comment with respect to the following two issues: (i) NWD’s agreement in its revised Rebuttal position to allocate 20% for schools and 4% for libraries in determining the percentage of City Manager, City Solicitor and Finance Administration costs

¹ Thus, the Division maintains its Surrebuttal positions relative to adjustments the Division made for Motor Vehicle Fuel Expense (\$12,174), amortization of Cost of Service Study Expense (\$25,000), and the cost allocation to NWD of the City Clerk’s office costs (1%).

allocable to NWD, and (ii) Portsmouth's request to "reject NWD's request to repay monies owed to the City." Portsmouth's Pre-hearing Brief at 12.

A. NWD's Revised Rebuttal School and Library Allocation

The Division continues to disagree with NWD's revised allocation of the School and Library budgets in determining the percentage of City Manager, City Solicitor and Finance Administration costs allocable to NWD. In its revised Rebuttal position, NWD agreed to allocate 20% for schools and 4% for libraries. NWD Exhibit 15-16. Ms. Sitrin, however, concedes that the City Council holds workshops and joint meetings to address School and Library budgets. Sitrin Rebuttal Testimony at 5. She also concedes the City Council meets with the School Committee at least twice a year, and that the City Manager proposes annual operating allocations for the School Department in his proposed operating budget. Id. Ms. Sitrin further acknowledges that she, as Finance Director, participates on the School Committee's Ad Hoc Building Committee, as do two City Councilors, id. at 6, and that the City Manager and City Finance Director meet, on occasions, with the School Committee. Id. at 7. Ms. Sitrin also recognizes that the Library Board and Director meet with the City Manager to present their capital and operating budgets. The Library Board then presents its budget to the City Council. See generally Catlin Direct Testimony at 14.

These activities, in the Division's opinion, cannot be characterized as "minimal." Rather, they are reflective of significant oversight and participation by the City in School Department and Library budgeting processes. It is reasonable, as well as consistent with the procedure adopted in Docket No. 3818, to include in the City budget, the percentage

calculation of General Fund contributions to the School and Library budgets of 61% and 78%, respectively. Catlin Surrebuttal Testimony at 8.

Even with the adoption of this calculation, as Mr. Catlin observed on Page 9 of his Surrebuttal Testimony, "...the overall portion of Finance Department costs assigned to Newport Water is too high because it fails to give adequate consideration to the fact that NWD has its own Director of Finance that it shares with the Water Pollution Control Division and has its own financial analyst." The Division, however, has accepted NWD's Finance Department allocation for purposes of this case *on the condition* that the School and Library budgets are included in the calculation of the budget's percentage used to allocate Finance (and other costs) as recommended by the Mr. Catlin in its Surrebuttal Testimony. Should the Commission decide not to include School Department and Library budgets or to include them in the minimal percentages proposed by NWD, then it is Division's position that the Finance Department allocation should be revised to be consistent with Mr. Catlin's Direct Testimony at Pages 15-17.

B. Portsmouth's Request To Bar Repayment To The City Of Newport

In Docket No. 3818, the Commission held:

As for the money owed to the City of Newport, Newport Water's final request did not include any amount in rates to accomplish repayment of this amount other than a funding mechanism to pay off the \$500,000 loan. The Commission finds that \$1,584,171 should be paid back to the City. The Commission will not include this repayment to the City in Newport Water's revenue requirement, but if Newport Water realizes savings from efficiencies, and such funds are not required for expenses included in the revenue requirement, it may use such savings to pay down the accounts payable balance owed to the City.

Order No. 19240 at 38 (emphasis added).

Portsmouth contends Order No. 19240 conditions repayment to the City of Newport upon NWD's identification of "efficiencies" to make repayment to the City, and further that, the change from tri-annual to quarterly billing is not an "efficiency" within the meaning of Order No. 19240. Portsmouth Pre-hearing Brief at 10. The Record in Docket No. 3818 belies Portsmouth's position as to both assertions.

In Docket No. 3818, Order No. 19240, the Commission found that the transition to quarterly billing would generate a one-time increase of approximately \$700,000 to \$900,000. Order No. 19240 at 41. See also 7/25/2007 Tr. at 11 & 19-20. Additional revenue of \$300,000 is expected in the rate year, increasing to revenue of \$500,000 each year thereafter as a result of the additional billings. Order No. 19240 at 40.

As specifically noted by the Commission in Order No. 19240, NWD had not requested an amount in rates to commence repaying the City \$1,584,421. Moreover, the transition to quarterly billing was expressly termed by the parties as one—in fact the principal—of several "efficiencies" that the NWD was in the process implementing. 7/24/2007 Tr. at 97-98. Another was the implementation of radio reads. Id. at 31. Rather than unnecessarily include an amount in rates to effect repayment of the \$1,584,121², the Commission ruled that NWD should repay that sum to the City, and that repayment could come from "savings from efficiencies if such funds are not required for

² As of June 30, 2005, NWD reported a balance of \$709,421, which consisted of \$356,081 in payroll and \$353,340 in Due to Other City Funds. Order No. 19240 at 31. Cash less total outstanding payables for the periods ending June 30, July 31 and August 31, 2005, however, were -\$919,761, -\$376,950 and -\$54,069, respectively. NWD Exhibit 13 (Docket No. 3818). The absence of a significant deficit between NWD's cash position and payables due to the City during FY 2005 shows that the rates given to NWD in Docket No. 3578 were able to sustain the utility's operations through the end of FY 2005. Thus, repayment of \$709,421 did not constitute "additional monies" that NWD was barred from borrowing from the City of Newport until after July 1, 2005, and therefore, did not contravene the settlement in Docket No. 3578. See 5/27/2009 Tr. at 27 (where the Chairman indicates that the Commission approved repayment of \$709,000 to the City of Newport).

expenses included in the revenue requirement.” Order No. 19240 at 38. Thus, as used in Order No. 19240, the production of "efficiencies" was *not* a condition precedent to repayment of the City but rather merely a means to commence the required repayment at the time of the Order without increasing rates.

The Record in Docket No. 3818 amply supports this conclusion. Between June 30, 2006 and June 30, 2007, NWD's cash and total payables had increased to \$1,485,606, Order No. 19240 at 31. As of June 30, 2007 NWD's total payables were \$1,584,171. NWD Exhibit 20 (Docket No. 4025). In Docket No. 3818, however, all of the parties (including Portsmouth) conceded that the summer of 2006 was "wetter" than normal, 7/25/2007 Tr. at 189, and that NWD sustained a decrease in consumption across virtually all classes in FY 2007 equal to approximately an \$800,000 decrease in revenues. 7/24/2007 Tr. at 72 (Docket No. 3818). NWD also incurred roughly \$531,000 in unexpected, nonrecurring expenses in FY 2006 and FY 2007. NWD Exhibit 1(a) (Docket No 3818). NWD reflected these expenses in cash flow statements that the utility filed (and continues to file) with the Commission on a monthly basis.

The Commission accepted these uncontested facts in the last docket. See Order No. 19240 at 6, 38 (discussing "unforeseen expenses" and decline in revenues experienced by NWD in FY 2006 and/or FY 2007). The Commission also has accepted the cash flow statements without any indication that they do not constitute "documentary evidence" under G.L. § 39-3-11.1(a), as is entirely proper under existing precedent. See Audobon Society of Rhode Island v. Malachowski, 569 A.2d 1 (R.I. 1990) (repayment is appropriate under § 39-3-11.1(a) even though letter breaking down claimed costs into seven categories is the only documentation that reflects the "loan.") Thus, although

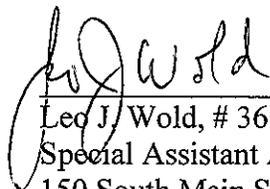
payables to the City increased substantially in FY 2006 due to abnormal or one-time events, none of the \$1,584,171 can be attributed to a NWD violation of a prior Commission Order, Providence Water Supply Bd. v. Malachowski, 624 A.2d 305, 311 (R.I. 1993) or fiscal imprudence on the part of the utility. Id. at 310. No factual basis existed in Docket No. 3818 or legal basis (based on the aforementioned uncontested facts) exists under G.L. § 39-3-11.1(a) to construe Order No. 19240 as *conditioning repayment* to the City of Newport upon the creation of “efficiencies.” The City is legally entitled to repayment \$1,584,171 from NWD under G.L. § 39-3-11.1(a). Portsmouth’s request to bar repayment to the City of Newport, therefore, should be denied.

C. CONCLUSION

For the foregoing reasons, the Division requests that the Commission adopt the position reflected in the Division’s Surrebuttal Testimony.

Respectfully submitted,
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By its attorneys,

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CERTIFICATE OF SERVICE

I certify that a copy of the within Brief was forwarded by e-mail to the Service List in Docket No. 4065 on June 18, 2009.

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