

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

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

**ORDER
(REMAND)**

This matter was remanded to the Public Utilities Commission (“Commission”) from the Rhode Island Supreme Court for further findings regarding the issue of repayment of amounts owed to the City of Newport (“City”) by the Newport Water Division (“Newport Water”). On March 29, 2010, the Commission issued Order No. 19940 in Docket No. 4025 (In re: City of Newport Water Division application to Change Rate Schedules), granting Newport Water a revenue increase to support a total cost of service of \$11,528,666 for effect on usage on and after July 1, 2009. In that Order, the Commission interpreted a prior Order allowing Newport Water to repay amounts owed to the City. Specifically, the Commission found that Newport Water had not violated that prior Order. That prior Order, issued in Docket No. 3818 stated:

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 [previously recognized] \$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.¹

In Docket No. 4025, the Portsmouth Water and Fire District (“PWFD”) had argued that Newport Water had violated the Commission’s Order No. 19940 (Docket No. 3818) because it had reduced its payables to the City, allegedly without realizing any savings from

¹ Order No. 19240 (issued March 24, 2008) at 38.

efficiencies. PWFD also argued that Newport Water had diverted funds from expenses included in the revenue requirement for the purpose of repaying the City. Following the issuance of the Commission's Order finding that there had been no violation of the Order issued in Docket No. 3818, PWFD petitioned the Rhode Island Supreme Court for issuance of a Writ of Certiorari to review the Commission's Order No. 19940.

On January 9, 2012, the Supreme Court entered an Order stating that the Commission had not made "sufficient findings of fact to support its conclusion that Newport Water complied with the order in docket No. 3818."² Noting that the Commission had identified cost savings identified by Newport Water and had found that Newport Water had realized efficiencies through the transition to radio reads and more frequent billing, the Court stated, "[t]he [Commission], however, did not specifically identify the sources of these 'net cost savings,' or quantify them, such that we can determine whether the utility realized \$1,584,171 of 'savings from efficiencies' that were 'not required for expenses included in the revenue requirement.'"³ The Court therefore, remanded the case back to the Commission "with directions that it make more specific findings of fact to support its conclusion that Newport Water complied with the order in docket No. 3818."⁴

After reviewing the Court's Order, Commission staff scheduled a status conference with the parties at which, legal counsel for Newport Water, PWFD and the Division of Public Utilities and Carriers ("Division") attended. There was some disagreement regarding the scope of the Court's charge to the Commission and there was initial disagreement regarding whether the Commission was required to conduct a hearing. However, legal counsel for PWFD and Newport Water maintained that a hearing was not required while PWFD's legal

² Portsmouth Water and Fire District v. R.I. Pub. Utilities Comm'n., 37 A.3d 114, 117 (R.I. 2012).

³ *Id.*

⁴ *Id.* at 118.

counsel even suggested a hearing would be inappropriate. Counsel for the Division believed a hearing may be required, but deferred to Counsel for Newport Water and PWFD. In making the procedural decision of whether to conduct hearings, the Commission compared the Supreme Court's Order in this matter to the Court's Opinion in *The Narragansett Electric Company d/b/a National Grid v. R.I. Pub. Utilities Comm'n.* which stated in part, "the case is remanded to the PUC with instructions that it conduct a hearing to determine the appropriateness of the company's current capital structure."⁵ Based on the difference in language used by the Court, the Commission decided that procedurally, the Court expected the Commission to review the Record in Docket No. 4025 and make its findings from that Record, but that the Court had not required the Commission to conduct further hearings. In light of this review and the parties' position, the Commission did not conduct further hearings, but rather, relied solely on the evidence in the Record as it existed on the day of the Open Meeting.

On August 8, 2012, the Commission considered the Record at an Open Meeting.⁶ The dispute between the parties during the pendency of Docket No. 4025 was whether Newport Water had complied with the Commission's Order in Fiscal Year 2008. The Rate Year used for setting rates in Docket No. 3818 was Fiscal Year 2008. The Test Year used in Docket No. 4025 to set rates for Fiscal Year 2009 was Fiscal Year 2008. Therefore, the Commission has in the Record the revenues and expenses for this twelve-month period. In

⁵ *The Narragansett Electric Company d/b/a National Grid v. R. I. Pub. Utilities Comm'n.*, 35 A.3d 925, 938 (R.I. 2012).

⁶ The Commission had previously scheduled an Open Meeting, but had delayed its decision. Prior to that previously scheduled Open Meeting, Commission legal counsel had provided a decision chart to all of the parties and the Commissioners to provide a roadmap for the Commissioners to follow in responding to the Court's charge. However, PWFD's legal counsel had advised legal counsel through an electronic communication that he disagreed with her analysis of the Court's charge in its Order. She then advised the Commission and the other parties of this communications at the previously scheduled Open Meeting. In response to PWFD's concern, the Commissioners agreed to review the Court's Order independently of the decision chart supplied by its own legal counsel. Accordingly, the deliberations were rescheduled to the Open Meeting for August 8, 2012.

reviewing the Record, the Commission references Newport Water's calculations and categorizations of funds available to reduce payables to the City which was contained in Exhibit B to Newport Water's Post-Hearing Brief, and which may be traced to RFC Schedule 3 Rebuttal and the Pre-Filed Testimony of Julia Forgue.

To summarize, Newport Water claimed that in Fiscal Year ending June 30, 2008, it realized \$709,891 in savings which were expenses that came in lower than what was included in the revenue requirement. Newport Water also claimed \$108,756 in reductions which were the result of management decisions and which were expenses that were lower than what was included in the revenue requirement. Newport Water also categorized \$101,123 as deferrals, arguing that those were available to reduce its payables to the City. Newport Water reduced this by Overages in the amount of \$261,148, representing expenses that were higher than those included in the revenue requirement. Therefore, Newport Water concluded that the total available through these sources to repay the City was \$658,622.

The Commission has reviewed the categories of savings proffered by Newport Water and will accept most, but not all of Newport Water's classification of the savings and reductions as representing cost savings which were available to Newport Water for the purposes of reducing its payables to the City. First, savings relate to items that unexpectedly came in below budgeted levels as more fully described below, including (1) employee retirements; (2) absenteeism due to disability leave; (3) a reduction in overtime based on a reduction in water main breaks; (4) opt-outs for family health care; (5) reduced participation in the tuition reimbursement benefit; (6) change in City policy regarding payment for phone service; (7) reduced need for heavy equipment rental due to reduction in water main breaks, reservoir maintenance not needed because of new DEM regulations; (8) delay in sewer

startup reducing the payments owed by NWD; (9) less than anticipated regulatory fees from RIDOH, anticipated service contract not required in FY 2008; (10) no self insurance needed in FY 2008; (11) no layoffs requiring no unemployment claims; and (12) other reductions related to drawing down on inventory or reducing dues and subscriptions, temporary labor or conferences and training, *but not putting off repairs or maintenance as a result.*⁷ However, the Commission cannot accept Newport Water's position that savings should include deferred costs such as things like maintenance items which were simply held off until after the rate year.⁸ While the Commission believes that savings and reductions were the types of things the Commission anticipated when referencing efficiencies, the Commission does not agree that deferrals equate to efficiencies. While it may be an appropriate management prerogative to defer expenses in order to manage a budget, these deferrals do not represent the types of cost savings contemplated by the Commission in Docket 3818. Therefore, the Commission determines that \$101,123 should not be included in the calculation of savings leaving the Commission to conclude that Newport Water realized \$557,499 in the type of net cost savings that would fall within the language of the Docket No. 3818 Order.⁹

There was no discussion of the use of excess revenues in Order No. 3818 which is silent with regard to Newport Water's usage of any excess revenues it may realize above those projected by the Rate Year revenue requirement due to increased sales volumes. The usage of such funds is normally a management decision by the utility based on a reasonable determination of where the funds are needed the most. This is normally not an area into which the Commission is entitled to delve and the Commission declines to do so in this case.

⁷ Newport Water Exhibit 1A (Pre-Filed Testimony of Julia Forgue) at 14-25; RFC Schedule 3 Rebuttal; *See* Newport Water's Post-Hearing Brief at Exhibit B and Exhibit E (summarizing and categorizing the savings, reductions and deferrals discussed in Ms. Forgue's Testimony and shown in RFC Schedule 3 Rebuttal).

⁸ *Id.*

⁹ *See* Newport Water's Post-Hearing Brief at Exhibit B.

Therefore, although not an efficiency, Newport Water had another \$191,997 available to it to reduce payables to the City in Fiscal Year 2008.

In the original Docket 4025 Order, the Commission found that there were cost savings resulting from the AMRs (Automated Meter Readers). Unfortunately, a further review of the docket does not result in an adequate quantification of those savings. The Court also asked for a quantification of the cost savings from the increased billing frequency. The Commission finds that Newport Water realized annual cost savings of \$128,182 from increasing the frequency of billing resulting in an extra billing charge. However, in the Docket No. 3818 Order in which the Commission referred to this as a source of revenue to reduce payables to the City, the Commission also ordered Newport Water to restrict those funds through the end of Fiscal Year 2009. Subsequently, in Docket 4025, Newport Water was ordered to utilize these funds specifically to reduce payables to outside vendors in Fiscal Year 2010, making those funds unavailable to Newport Water for purposes of reducing payables to the City. However, despite the fact that these two sources of funds would arguably qualify as examples of efficiencies in Docket No. 3818, they were either not quantified or were documented as having later been made unavailable to Newport Water. The Commission notes that the mere existence of examples in the Docket No. 3818 Order did not preclude Newport Water from achieving other sources of savings to utilize for repayments to the City.

Finally, the Commission is hopeful that it has sufficiently made the further findings of fact sought by the Court. The Commission must clarify, however, that there is no evidence in the Record in Docket No. 4025 that Newport Water repaid \$1,584,171 to the City of Newport in Fiscal Year 2008. In fact, the only reference to the amount allegedly repaid to

the City was by PWFD in a footnote to its Pre-Hearing Brief which referred to an annual report that was not part of the Record. According to PWFD, based on this review, Newport Water appeared to have repaid \$952,252.¹⁰ However, because it was not part of the Record, the Commission could not and still cannot rely on the numbers contained in that document. The Commission does note that Newport Water's Full Exhibits in this case included Cash Flow Reports through April 2009.¹¹ The Cash Flow Reports showed that Newport Water had never reduced its payables to zero and further, that as of June 30, 2008, one year after the Cash Flow Report used in Docket No. 3818, Newport Water's outstanding balance to the City was \$1,005,417.¹² However, as the Court had not specifically requested the Commission to make a determination on this issue in its Order, the Commission declined to do so at Open Meeting.

In conclusion, the Commission finds that Newport Water had available to it \$557,499 in the type of net cost savings that would fall within the language of the Docket No. 3818 Order and an additional \$191,997 available from increased revenues during the Rate Year to reduce its payables to the City. To the extent Newport Water utilized these funds to repay the City of Newport, the Commission is still of the opinion that Newport Water complied with the Commission's Order in Docket No. 3818.

According, it is hereby

(20792) ORDERED

1. The City of Newport, Utilities Department, Water Division had \$557,499 available to it in Fiscal Year 2008 from the type of net costs savings that would fall within the language of the Docket No. 3818 Order.

¹⁰ Pre-Hearing Brief of PWFD, p.9, n.10.

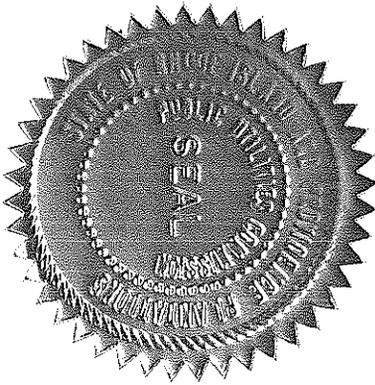
¹¹ Newport Water Exhibits 20, 21.

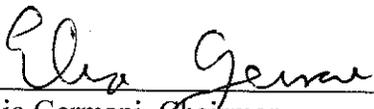
¹² Newport Water Exhibit 21.

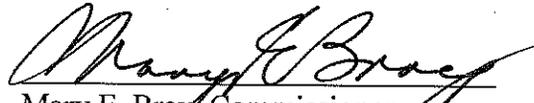
2. The City of Newport, Utilities Department, Water Division had \$191,997 in additional revenues available to it to repay the City of Newport in Fiscal Year 2008 because of higher than projected consumption.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION AUGUST 8, 2012. WRITTEN ORDER ISSUED AUGUST 10, 2012.

PUBLIC UTILITIES COMMISSION




Elia Germani, Chairman


Mary E. Bray, Commissioner


Paul J. Roberti, Commissioner

NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I.G.L. SECTION 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN DAYS (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.