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June 18, 2009

Via Electronic and Regular Mail

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Re: *Newport Water – Docket 4025*

Dear Ms. Massaro:

Enclosed for filing in the above-referenced matter are an original and nine copies of Portsmouth Water and Fire District's Post-Hearing Brief.

Please feel free to contact me at (401) 457-5216 if you have any questions concerning this filing.

Very truly yours,



David M. Marquez

DMM:jlm

Enclosures

cc: Docket 4025 Service List (electronically only)

985694 (38210/137951)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: THE CITY OF NEWPORT, :
UTILITIES DEPARTMENT WATER DIVISION : Docket No. 4025
APPLICATION TO CHANGE RATE SCHEDULES :

**PORTSMOUTH WATER AND FIRE DISTRICT'S
POST-HEARING BRIEF**

I. INTRODUCTION

In the previous docket Newport Water sought to repay \$1,584,171 to the City of Newport ("City"). Portsmouth Water and Fire District ("Portsmouth") opposed that repayment contending it would violate an earlier settlement agreement in which Newport Water agreed not to repay any further amounts to the City. The Commission decided that issue in Docket 3818 and held that Newport Water could repay the \$1,584,171¹ it reported owing to the City as of the end of FY 07, but the Commission elected not to include this repayment in the revenue requirement. The Commission permitted Newport Water to repay the City only if "Newport Water realizes savings from efficiencies, and such funds are not required for expenses included in the revenue requirement." (Order No. 19240 at 38, 46.) The Commission's Order carefully balanced the competing interests and permitted the repayment in a manner that protected the interests of the ratepayers who were already repaying \$2.5 million to the City.

The pre-filed and live testimony from Newport Water in the present docket demonstrates that Newport Water disregarded the Commission's Order and simply repaid the City without ever considering the restrictions or requirements imposed by the Commission.

¹ Portsmouth noted in its Pre-Hearing Brief, and again at the public hearing on May 27, 2009, that Newport Water's 2007 annual report showed that Newport Water's payables to the City actually amounted to \$1,901,413 – not the \$1,584,171 previously reported to the Commission. The difference is significant: \$317,242, or about 20% higher than the Commission believed when it issued Order No. 19240.

Newport Water viewed the Order as a green light and – as the City’s Director of Utilities testified – immediately prioritized its cash flow to direct payments to the City while ignoring many of the expenses it told the Commission, under oath, that it needed to incur in FY 2008. Newport Water’s non-compliance with the Commission’s Order is manifest and demonstrated by its own exhibits and testimony. Indeed, Newport Water’s disregard of the requirements of the prior Order was so complete that it could not explain its conduct at the public hearing on May 27, 2009. As the Chairman aptly noted at hearing, “words do have meaning.” In this case, they mean that Newport Water and the City owe the ratepayers at least \$1.5 million.

The evidence presented in pre-filed testimony and at the public hearing also demonstrate that Newport Water’s proposed allocation for City services is unreasonable. Newport Water continues to ask that the Commission direct too much ratepayer money to the City.

Finally, Portsmouth asks the Commission to include two other findings, essentially uncontested by Newport Water, in its order in this docket:

- Newport Water should employ all reasonable methods to separately allocate costs related to pumping for supply and distribution and pumping for treatment.
- Newport Water should take all reasonable steps to share information as it is developed regarding the planning, design, and construction of the replacement Lawton Valley Water Treatment Plant.

These findings will help reduce the likelihood of disputes concerning these matters in future dockets.

II. FACTS

A. Newport's Rate Application

On December 9, 2008, the City of Newport, Utilities Department, Water Division ("Newport Water"), a municipal utility, filed a rate application pursuant to R.I. Gen. Laws § 39-3-11 with the Public Utilities Commission. The application as originally filed seeks additional operating revenue in the amount of \$3,353,023 to support total cost of service of \$12,754,756.

B. The Pre-Filed Testimony

In support of its application, Newport Water submitted pre-filed direct testimony of Julia Forgue, P.E., the City's Director of Utilities, Harold Smith, Vice-President of Raftelis Financial Consulting, and Laura Sitrin, the City's Finance Director. Ms. Forgue, Mr. Smith, and Ms. Sitrin also submitted rebuttal testimony.

Portsmouth intervened and submitted pre-filed direct and surrebuttal testimony of Christopher Woodcock, President of Woodcock & Associates, Inc.

The U.S. Navy intervened and submitted pre-filed direct and surrebuttal testimony of Ernest Harwig, a consultant under contract to Brubaker & Associates, Inc.

The Division of Public Utilities ("Division") conducted an investigation and submitted pre-filed direct and surrebuttal testimony of Thomas Catlin, a principal with Exeter & Associates.

C. The Public Hearing

Following notice, a public hearing was held at the Commission on May 27, 2009.

III. DISCUSSION

A. **The Commission should require Newport Water and the City to return at least \$1.5 million to the ratepayers because Newport Water made these payments in violation of Order No. 19240**

The Commission's Order in Docket 3818 is clear. Newport Water could repay the \$1,584,171 it reported owing to the City as of the end of FY 07 only under specific conditions:

The Commission finds that the \$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, 46.) Newport Water acted as if the Order included only the first sentence. But, the Order goes on to reflect the Commission's determination that the funds used to repay the City could not come from the revenue requirement. Instead, the Commission limited the repayment to funds (1) realized from savings from efficiencies, and (2) that are not required for expenses in the revenue requirement. It is therefore Newport Water's burden to demonstrate in this docket that it has complied with the Order's requirement that the \$1,584,171 was repaid with savings derived from efficiencies – and not with money allowed for other expenses in the revenue requirement. (See R.I. Gen. Laws § 39-3-12 (“At any hearing involving any proposed increase in any rate, toll, or charge, the burden of proof to show that the increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the public utility.”).) Newport Water has failed to meet its burden.

1. **Newport Water has not demonstrated that any of the money used to repay the City was realized from efficiencies**

Incredibly, Newport Water did not even attempt to meet its burden. It offered no testimony or evidence that demonstrates that even \$1 of the money it paid to the City met the

Commission's requirements.² To the contrary, the direct testimony of Ms Forgue and the exhibits proffered by Mr. Smith conclusively demonstrate that Newport Water took funds allocated for revenue requirement items – like inventory and repairs – and simply diverted those funds to the City³:

- “Newport was able to reduce its payables due to increased revenue and its conservative approach to purchasing, which reduced operations and maintenance spending.” (Forgue Direct⁴ at 7:7-8);
- “Many of these [normalization] adjustments were necessary due [to] Newport’s efforts to reduce its outstanding payables.” (Id. at 13:10-15);
- “The spending in conferences and training was cut back in FY 08 to reduce our outstanding payables and does not reflect a normal year of expenses.” (Id. at 14:26-27);
- “The purchasing of office supplies was curtailed in an effort to reduce our outstanding payables.” (Id. at 16:2-3);
- The normalization adjustment to temporary salaries “was done to conserve cash in order to reduce outstanding payables.” (Id. at 16:26-29);
- “In addition, \$2,825 that was budgeted for security changes and other enhancements was delayed until FY 09 in order to reduce payables.” (Id. at 17:7-10);
- “Raw material purchases for dam repairs were limited, as well as tree removals budgeted at \$3,000 were not performed.” (Id. at 18:19-24);

² Newport Water’s protest at the hearing that Portsmouth surprised it with this issue speaks volumes. First, it confirms that Newport Water utterly disregarded the Commission’s requirements and made no attempt to comply with the Commission’s Order. Second, no party can legitimately claim surprise that it is held to compliance with the Commission’s order in the previous docket on a hotly contested issue. Third, Portsmouth plainly flagged the issue in its own testimony and in its data requests where it specifically asked Newport Water to supply evidence that it complied with the Commission’s Order. (See Woodcock Surrebuttal at 18:11-12; PWFD Data Request 5-1.) Finally, Newport Water’s obligation to comply with the Commission’s previous Order is an appropriate and compelling issue regardless of whether Portsmouth raised it in the pre-hearing papers.

³ Although Newport Water has suggested that it reduced its payables across the board, i.e. it did not specifically direct the money that would have otherwise gone to expenses to the City, (see May 27, 2009 Hrg. Trn. at 151:4-12, 152:17-20, 170:1-10), the relatively large amount owed to the City compared to any other single vendor meant that most of the money directed to payables necessarily went to the City. Further, the point remains that *no money* should have gone to repay the City the \$1,584,171 set forth in Order No. 19240 unless that money was realized from efficiencies.

⁴ All citations to pre-filed testimony indicate testimony in Docket 4025 unless otherwise noted.

- “The Water Division deferred maintenance at the plant including repairs to air handling equipment, heat and hot water heater maintenance, and replacement of analyzers.” (Id. at 20:11-13);
- “The Water Division has deferred maintenance at the [Lawton Valley] plant, including maintenance to heat and hot water heater systems, valve updates, spare parts, and supplies, in an effort to reduce outstanding payables.” (Id. at 21:20-26);
- “Maintenance has been deferred at [70 Halsey Street and the Forest Avenue pump station]. By way of example, roof replacement, air conditioning, and overhead doors were deferred during FY 08.” (Id. at 24:18-22);
- “In an effort to reduce our outstanding payables, the replacement of materials inventory, including ductile iron pipe, fittings, tapping sleeves, etc. were kept at a minimum during the test year.” (Id. at 24:25-27);
- “In an effort to reduce our outstanding payables, the replacement of materials inventory, including copper pipe, service boxes, fittings, etc. was kept at a minimum during this year. Replacement of service barricades, safety cones and tools was also deferred.” (Id. at 25:4-7);
- “Maintenance has been deferred at both [70 Halsey Street and the Forest Avenue pump station] due to cash flow concerns.”⁵ (Id. at 33:9-13);
- “Newport Water has deliberately curtailed spending where possible by scrutinizing every expense to determine if it is absolutely vital. Unfortunately, necessary expenses in accounts such as dues and subscriptions and conferences and training have been targeted as areas where spending is curtailed in order to address the cash flow issue. Newport Water is now approaching a point where its cash flow problems are moderating, and while we always review expenses, we hopefully are reaching operations where our expenses are balanced by our revenues. This will allow us to make expenditures on necessary items that have been curtailed in past years due to the cash flow issues.” (Forgue Rebuttal at 5:11-23).

In total, as summarized in the following table⁶, Newport Water deferred spending at least \$228,816 in FY 08 – all of which had been approved by the Commission as part of the revenue requirement in Docket 3818 – for the express purpose of reducing its payables:

⁵ While only a few portions of Newport Water’s testimony specifically justify deferred spending on the ground that the utility had “cash flow concerns,” see, e.g., Forgue Direct at 33:9-13, it is clear that the real issue was Newport Water’s efforts to reduce its payables, the bulk of which were owed to the City. (See May 27, 2009 Hrg. Trn. at 88:1-14.) To the extent Newport Water had “cash flow concerns,” it was only because it was intent on reducing its payables to the City. Absent that diversion of funds, there would have been no cash flow issues.

NWD Budget Account #	Description	Amount Approved Rate Year Docket #3818 (FY-08)	Amount Spent (FY-08)	Difference	Amount Requested Docket #4025
		\$	\$	\$	\$
50212	Conferences and Training	20,500	4,830	15,670	20,500
50225	Contract Services	40,333	20,168	20,165	33,500
50275	Repair & Maintenance - Equipment	183,000	101,462	81,538	192,200
50276	Repairs / Main Maintenance	79,000	58,239	20,761	84,800
50277	Reservoir Maintenance	31,000	16,591	14,409	31,000
50296	Service Maintenance	33,500	17,490	16,010	33,500
50311	Operating Supplies	75,500	54,653	20,847	74,050
50361	Office Supplies	30,000	14,119	15,881	30,000
50004	Temp Salaries	50,000	26,465	23,535	58,100
	Total	542,833	314,017	228,816	557,650

(Source: Smith Direct, RFC Schedules 2 (Summary of Revenue Requirements by Line Item) and 3 (Revenue Requirements Detail by Division)) This amount reflects only those budget line items that included deferred expenses that were **specifically** testified to by Newport Water. Given that Newport Water limited its explanations of its normalization adjustments to those exceeding the lesser of \$5,000 or 10% of the test year, (see Forgue Direct at 13:17-19), there are undoubtedly many more budget line items in which expenses were deferred in order to reduce Newport Water's payables.⁷ (See May 27, 2009 Hrg. Trn. at 76:24-77:1 ("There are areas where we did not spend specifically for what was identified [in Docket 3818's revenue requirement].").) Indeed, Newport Water has claimed that all the \$1,584,171 owed to the City

⁶ This table was previously provided to the Commission in Portsmouth's response to the Commission's oral data request. (See May 27, 2009 Hrg. Trn. at 231:7-232:15.)

⁷ Presumably, the same pattern was repeated in FY 09, meaning that almost \$500,000 in spending may have been deferred in these budget line items alone – again, these are only those budget line items that included expenses that Newport Water specifically testified were deferred for the purpose of reducing payables. In any event, Newport Water's own submissions show that in FY 08 it spent only 58% of what the Commission approved in Docket 3818 for these specific budget line items, yet in this docket it is requesting even more than what was previously approved for these items.

as of the end of FY 07 was paid back in FY 08. (See May 27, 2009 Hrg. Trn. at 16:19-17:1, 84:10-13.)

Moreover, on May 7, 2009, Portsmouth specifically requested that Newport Water identify any savings it realized through efficiencies. (Portsmouth Data Request 5-1.) On May 21, 2009, after all pre-filed testimony was submitted, Ms. Forgue, the City's Director of Utilities, provided the following response:

As set forth in RFC Schedule 3, ***Newport spent less money in FY08 than was allowed by the Commission in Docket 3818.*** (See RFC Schedule 3 which lists each of these savings and the amount of each savings). As set forth on page 13 of my direct testimony, ***these savings resulted primarily from Newport cutting back a number of expenses in an effort to reduce payables.*** In addition, other actual expenses were not as high as forecasted in Docket 3818. Many of the reasons for the reduced expenses are more fully explained in my direct testimony in which I address the normalizing adjustments.

(Newport Water Response to Portsmouth 5-1 (emphasis added).) In other words, Newport Water spent less money in FY 08 *primarily because it cut back on expenses for the express purpose of reducing payables* and, to a lesser degree, because some expenses were not as high as previously forecast. (Id.) Newport Water thus confirmed what was already implicit in its pre-filed testimony, namely, *it has not identified any savings from efficiencies*. None. Instead, it concedes that it took funds collected to “meet expenses included in the revenue requirement” and used them to reduce its payables, the lion's share of which was owed to the City. (See May 27, 2009 Hrg. Trn. at 88:1-14 (Q: “The largest creditor by far was Newport, the City, correct?” A: “At that point I'm – I believe so.”).) Newport Water deferred these expenses even though its water sales (and thus revenues) in FY 08 were higher than projected.⁸ (See Smith Direct, RFC Schedule A (FY 08 actual sales).)

⁸ While Newport Water's FY 08 water sales were higher than projected, Portsmouth, in its Pre-Hearing Brief, inadvertently provided the Commission with an erroneous figure of \$464,308, representing the revenue derived

At the public hearing, Portsmouth questioned Newport Water about a specific budget line item, Repairs & Maintenance: Equipment, within the Distribution division, for which the Commission approved \$30,000 in Docket 3818. In FY 08, Newport Water spent only \$2559 on that item, a difference of \$27,441. (Smith Direct, RFC Schedule B-8 (Projected Costs for Rate Filing, Distribution Division); see also Forgue Direct at 33:9-15. And yet, in the current docket, Newport Water has actually increased to \$32,000 the amount of money it seeks for Repair & Maintenance: Equipment, Distribution Division (Smith Direct, RFC Schedule B-8 (Projected Costs for Rate Filing, Distribution Division; Forgue Direct at 33:9-15), and has included the same items from Docket 3818, as the following table demonstrates:

Repair & Maintenance – Equipment, Distribution Division	Amount Approved (Docket 3818)	Amount Actually Spent (FY-08 Test Year)	Difference	Amount Requested (Docket 4025)
Roof	18,000	-	18,000	15,000
Air Conditioning	4,000	-	4,000	4,000
Overhead Doors	3,000	-	3,000	3,000
Miscellaneous	5,000	2,559	2,441	3,000
Equipment Racks	-	-	-	7,000
<u>TOTAL</u>	<u>30,000</u>	<u>2,559</u>	<u>27,441</u>	<u>32,000</u>

(Source: Smith Direct, RFC Schedule B-8 (Projected Costs for Rate Filing, Distribution Division).) Thus, the Commission approved funds for Repair & Maintenance: Equipment, Distribution Division, in Docket 3818, even though Newport Water had not spent funds

from the additional sales. Portsmouth’s calculation was based on newer, higher water rates approved by the Commission, and did not reflect that the rates were phased in on July 1, 2007. Portsmouth apologizes for that error.

approved by the Commission in Docket 3675 on this same line item – while claiming that continued deferral “would most likely result in widespread equipment failures.” (See Docket 3818, Forgue Direct at 13:26-14:5). In total, out of the \$60,000 approved for this budget line item for FY 08 and FY 09, Newport Water spent \$2559 in FY 08 and, according to testimony provided at the public hearing, \$10,000 through April of FY 09. (See May 27, 2009 Hrg. Trn. at 70:12-16; 98:9-11.) This does not square with Newport Water’s express admission that such deferrals would lead to widespread equipment failures that could impact its ability to provide service. Further, Newport Water collected this money from ratepayers in FY 08 and again in FY 09, and it now seeks the Commission’s blessing to collect the same money a third time in FY 10.

When specifically questioned about its decision to defer expenses in order to reduce its accounts payable, Newport Water essentially admitted that after the Commission issued Order No. 19240, thereby opening the possibility of repayments to the City, it decided to forego spending money it previously represented was necessary for its revenue requirement:

Q: Well, if you had sufficient inventory for the operations, why did you tell the Commission in the previous docket that you needed this amount of money for more inventory?

A: Because when we submitted the docket with this breakdown of what was going to be used for each of these line items with the examples, that was prior to the hearing with the direction about looking at how we were going to save -- be able to make additional payables to the city. So we -- this was done and so *we took a second look at -- after the order was issued with what we were allowed to look at how we could operate.*

Q: So after the Commission authorized you to repay the city you went back into your revenue requirement and you made decisions to -- not to spend money --

A: No.

Q: -- on those items you had included in the revenue requirement and to pay the city.

A. No, that's not correct. *We prioritized.* We took a closer look at how we spent our money. *We prioritized what was the most efficient expenses that were necessary for the utility*, that being treatment of water, distribution of water and operation of the facility.

...

Q: But when you come in and present a rate case with a revenue requirement, aren't you presenting to the Commission what you determine is absolutely necessary to operate the utility?

A: Yes, that's -- but we also need to make sure we have the funding, we have the cash in our account to make the payments. We could kind of -- if we continue to -- *if we had spent or tried to have spent everything that was listed here, we would have -- our vendor payables would be much larger and our city payables would be much larger because we didn't have the cash flow to make those payments* but we would have spent everything.

(May 27, 2009 Hrg. Trn. at 81:14-82:15 (emphasis added), 83:5-18 (emphasis added).) The language deliberately employed by Newport Water here and in its pre-filed testimony is revealing. Repeatedly, Newport Water has indicated that it deferred expenses *because* it was attempting to reduce its payables. (See, e.g., Forgue Direct at 13:10-15.) This contradicts any claim that Newport Water decided to reduce its payables only *after* determining that it did not need to spend funds included in its revenue requirement, such as would be the case if it first had realized savings through efficiencies. It also contradicts any claim that independent and ill-defined “cash flow concerns” dictated that Newport Water defer necessary expenses. Instead, the decision to defer expenses followed on the heels of Newport Water’s decision that it would exploit the opening presented by Order No. 19240 to repay its substantial debt to the City. Newport Water “prioritized” the money over to the City. Indeed, it was this prioritization that produced the “cash flow concerns” Newport Water has cited as an alternative explanation for why it deferred necessary expenses.

Now that its conduct is exposed, Newport Water tries to rationalize its decision by equating “prioritizing” expenses with realizing savings through efficiencies, (see May 27, 2009 Hrg. Trn. at 81:14-82:15), and to buttress its requests for more money for the same deferred expenses by saying that it would “like” to make repairs and purchases it previously characterized as necessary.⁹ (See May 27, 2009 Hrg. Trn. at 96:12-21.) As the Chairman appropriately noted at the public hearing, merely shifting money from the revenue requirement to the City’s coffers is not equivalent to realizing efficiencies within the meaning of Order No. 19240.¹⁰ (See May 27, 2009 Hrg. Trn. at 162:15-18, 165:6-11, 170:22-171:3.)

Not only have Newport Water’s actions directly contradicted the Commission’s Order and resulted in an unauthorized transfer of money from the ratepayers to the City – they also subject ratepayers to the risk of higher costs for necessary expenses in the years to come. Newport Water has previously testified that, while it was “comfortable” postponing preventative maintenance in FY 06, “continuing to do so would most likely result in widespread equipment failures that could impact our ability to provide service.” (See Docket 3818, Forgue Direct at 13:26-14:5). Indeed, at the May 27, 2009 public hearing, in response to a question by Commission counsel, Newport Water confirmed that the repairs identified in the Repair & Maintenance: Equipment, Distribution Division, line item still need to be completed:

Q: And is it Newport Water’s position that it did not need those funds in order to undertake those repairs in 2007 or -- in fiscal year 2008? I’m sorry.

A: No.

⁹ At the public hearing, Newport Water repeatedly attempted to blur the distinction between what it would *like* to spend and what it has represented to the Commission it *must* spend. (See, e.g., May 27, 2009 Hrg. Trn. at 96:12-21, 163:1-12.)

¹⁰ If Newport Water could claim an efficiency simply by deferring necessary expenses for which money was proposed and approved in the rate requirement, the Commission’s Order would be a nullity. Newport Water would be able to transfer away from its ratepayers as much money as it pleased – clearly, this is not what the Commission intended. Since Newport Water identified no other “efficiencies,” the Commission thus can conclude that Newport Water did not realize any savings from efficiencies.

Q: So those repairs were -- those repairs need to be done?

A: Yes. We would like to repair the roof, replace our air conditioning units, replace an overhead door, yes.

(May 27, 2009 Hrg. Trn. at 96:12-21.) In other words, the ratepayers will pay for these expenses in the next year or the following year, and may have to pay more due to Newport Water's decision to defer necessary activities.

In sum, Newport Water failed to identify in its pre-filed testimony and response to Portsmouth's data request any savings realized through efficiencies.¹¹ Although Order No. 19240 did not provide any specific definition of "efficiency," the import is straightforward: Achieve the Commission-approved service, safety, and quality goals with a minimum of effort and expense.¹² There exist many ways that Newport Water might have been able to meet this standard:

- Enhanced computer billing that would allow a reduction in billing clerks;
- Replace motors with more energy efficient ones (e.g. variable speed drives vs. constant speed pumps);
- Use electricity at off peak times (e.g., pump to storage at night);
- Cooperative arrangements, post-dating Order No. 19240, for purchasing goods and services;
- Increase energy efficiency (roof insulation, central air vs. individual window units, new windows, hybrid vehicles);
- Different plantings/landscape around dams that do not require as frequent mowing/maintenance;

¹¹ In this Docket 4025, Newport Water has asked the Commission for permission to use revenue resulting from the change to quarterly billing to repay the City for outstanding payables. (See Forgue Direct at 5:13-24 ("Newport would request that the balance of this fund be used to pay any outstanding payables Newport has at the conclusion of this case.")). The change from tri-annual to quarterly billing was ordered by the Commission in Docket 3818. (See Order No. 19240 at 46). It is not an "efficiency" within the meaning of Order No. 19240, and consequently Newport Water cannot use this money to pay its debt to the City.

¹² See, e.g., Webster's New Twentieth Century Dictionary (2d ed. 1983) at 578 (defining "efficiency" as the "ability to produce the desired effect with a minimum of effort, expense, or waste").

- Better use of internal resources (e.g. finance) rather than relying on City services;
- Use trenchless technology to reduce cost of excavation and pavement replacement;
- Train and certify distribution employees in traffic control to reduce reliance on and cost for police for traffic control; or
- Arrange for operator training at Newport Water to reduce travel time and expense.

These and other steps would have led to better management of the system and provided a revenue stream to repay the City over time – not in the first year.

In the pre-hearing discovery and at the public hearing, Portsmouth and the Commission pressed Newport Water repeatedly to identify even a single efficiency from which it realized savings, and it could not. Pursuant to the Commission’s clear instruction in Order No. 19240, Newport Water should not have paid back to the City *any* of the money owed at the end of FY 07, whether that amount was the \$1,584,171 referred to in the Order or the \$1,901,412 referred to in Newport Water’s annual report.

2. The Commission has the authority to order the City to repay any funds transferred from Newport Water to the City in violation of Order No. 19240

The Commission has the authority to require the City to reimburse the ratepayers for any funds that were not derived from efficiencies, because Newport Water is not a separate entity apart from the City – it is a department of the City. (See Newport Water’s Notice of Proposed Changes in Rates, filed on Dec. 9, 2008 (“Newport Water is a department of the City of Newport.”).) For the purposes of this rate proceeding, the City is subject to the Commission’s jurisdiction, and the Commission may order the City to provide restitution to Newport Water and, by extension, Newport Water’s ratepayers. (See R.I. Gen. Laws § 39-3-13.1 (2009) (providing that the Commission has the authority to order utilities “to make

restitution to any party or parties, individually or as a class, injured by the prohibited or unlawful acts”); see also Block Island Power Co. v. Public Utils. Comm’n, 505 A.2d 652, 656 (R.I. 1986) (“[T]he commission has the power to order refunds as a remedy for any ‘unjust, unreasonable, or discriminatory acts’ committed by the utility.”).)

Moreover, the Commission has the authority to explore remedies that do not necessarily involve the raw transfer of money from the City to Newport Water. (See R.I. Gen. Laws § 39-1-7 (“The commission shall have the powers of a court of record in the determination and adjudication of all matters over which it is given jurisdiction.”).) For example, the Commission could temporarily increase the rates paid by ratepayers within the City, since Newport Water’s improper payments ultimately redounded to the benefit of the City’s taxpayers. Or, it could add a surcharge to the public fire protection charges for Newport Water hydrants only. However it chooses to remedy the situation, it is clear that the Commission may order any form of relief which will “do equity to the parties”. (R.I. Gen. Laws § 39-3-13.1.)

B. Newport Water improperly allocates to ratepayers costs for city services that the City should bear

As Newport Water’s largest single customer, Portsmouth wants Newport Water to recover sufficient money in rates to safely operate its system and provide its customers a reliable supply of safe drinking water. Nonetheless, Portsmouth objects to Newport Water’s proposed allocation of city services costs because some of the costs are for services that do not contribute to the provision of water, and Newport Water’s understatement of the overall City budget means that ratepayers would be asked to pay for a larger amount of city services than the City actually provides to Newport Water. Newport Water’s customers should not be required to subsidize the City’s taxpayers for these costs that the latter should bear.

As explained in Portsmouth’s pre-filed testimony, the School and Library Department budgets need to be included in the City’s budget, as they were in the previous docket, in order

to determine how much Newport Water should be expected to pay for a number of the city services. (See Woodcock Direct at 5:14-20, 8:16-9:27.) Yet Newport Water's proposed allocation relies on a partial City budget that excludes the School and Library Department budgets.¹³ The testimony of the City's Finance Director, shows that the City, through its Council, Manager, and Finance Director, is involved to some degree with the operations of the School and Library Department. (See Sitrin Rebuttal at 7:29-8:4; Woodcock Surrebuttal at 8:11-30; Catlin Surrebuttal at 8:4-16.)

Additionally, Newport Water's proposed city services allocation far exceeds the allocations made for similar services by similar utilities. Newport Water's revised city services allocation is approximately 7% of the proposed operations and maintenance budget. (See Smith Rebuttal at 9:3-6.) Newport Water claims that 7% is less than the average allocation among utilities surveyed by Raftelis Financial Consulting (Newport Water's consultant in this docket). (See id. at 9:10-13.) However, Newport Water's survey relies upon information gleaned from unnamed utilities that are apparently not subject to any regulatory authority. A better method of comparison is to compare Newport Water to the several Rhode Island water utilities regulated by the Commission. For example, the Pawtucket Water Supply Board ("Pawtucket") allocates 2.1% of its operating budget to city services. (See Woodcock Surrebuttal at 5:26-29, citing Docket 3945.) Similarly, the Providence Water Board ("Providence") allocates 2.2% of its total operating budget to city services. (See id., citing Docket 3832.) These allocations are significantly less than the 7% allocation proposed by Newport Water (and are less even than the 4% allocation proposed for Newport Water by Portsmouth).

¹³ Portsmouth's proposed School Department budget represents only that fraction of the total School Department budget that is paid through the City's property taxes. (See Woodcock Surrebuttal at 9:5-13.)

Of particular concern are Newport Water's allocations for administration (e.g. Manager, Council, Clerk, and Human Resources) and finance. (See, e.g., Woodcock Surrebuttal at 4:18-21.) For example, Newport Water is requesting nearly \$83,000 for administrative oversight - \$4,408 for the City Council, \$18,383 for the City Clerk, and \$59,885 for the City Manager. (See Smith Rebuttal, RFC Schedule D Rebuttal.) In comparison, the Kent County Water Authority ("KCWA") Board is paid \$15,000 per year – less than one-fifth of what Newport Water is requesting – even though its administrative and financial responsibilities are commensurate with those of Newport Water. (See Woodcock Surrebuttal at 7:2-7.) Similarly, Newport Water has requested \$162,521 for services provided by the City's Finance Department, (see Smith Rebuttal at RFC Schedule D), even though Newport Water has previously represented to the Commission that its reliance on the City's Finance Department would decrease. (See Woodcock Surrebuttal at 9:20-29, citing Docket 3675, Nov. 9, 2006 Hrg. Trn. at 79.) Again a comparison to other Rhode Island utilities is helpful. KCWA does not rely at all on an outside finance department, and Pawtucket relies only minimally on an outside finance department. (See Woodcock Surrebuttal at 10:12-15.)

A few specific examples will highlight Portsmouth's objections to Newport Water's proposed city services allocation, without repeating wholesale the pre-filed and live testimony. Newport Water has proposed allocating the City Clerk's time based on water-related items in the City Council minutes. (See Sitrin Rebuttal at 11:7-13:23.) But Newport Water failed to explain why the ratepayers should pay \$20,000 for the Clerk to prepare and post council agendas and minutes. (See Woodcock Surrebuttal at 12:16-18.) Moreover, as in past dockets, Newport Water has been unable to establish exactly what other value the City Clerk's office provides to the water department. (See Docket 3818, July 24, 2007 Hrg. Trn. at 166:5-167:5;

Woodcock Surrebuttal at 12:20-29.) On this evidence, the Commission's 1% allocation in Docket 3818 is more than fair.

Similarly, Newport Water has proposed to allocate 16.9% of the cost of the Accounting Division to the Water Division based on the number of payroll and vendor checks the Accounting Division issues on behalf of the Water Division. (See Sitrin Rebuttal at 18:1-19:2.) As noted in Portsmouth's pre-filed testimony, the proposal to allocate this department's costs based on checks issued results in a cost per check of \$30! (See Woodcock Direct at 20:17-22.) Newport Water's response – that this “was an appropriate proxy to calculate the Accounting Division's time” (Sitrin Rebuttal at 18:11-18.) – leaves too much unexplained.

Newport Water's initial proposal to determine an allocation of the Assessor's office assuming a salary cost of \$125/hour was another example of taking an allocation to the extreme. (See Sitrin Rebuttal at 15:21-27.) Newport Water did agree to revise this allocation, but only after the absurdity of the City's methodology was highlighted by both Portsmouth and the Division. (See Woodcock Direct at 17:1-28; Catlin Direct 19:1-12.) The initial allocation of the City Council time is but one more example of the overstated value of the so-called City services. Again, Newport Water initially proposed an allocation based on City Council “items” with no recognition of (1) the scant time spent on water “items,” (2) other “items” that were actually multiple items, or (3) numerous other duties of the Council. (See Woodcock Direct at 15:5-18; Woodcock Surrebuttal at 11:5-28.)

These and other gross over-inflations of city services costs come after the Commission directed Newport Water, in Docket 3818, to produce a comprehensive cost allocation manual. As evidenced by Newport Water's proposed allocations in this docket, this 6 ½ page “manual”

shows little thought or attention to the real costs of these services, but instead creatively justifies huge increases to the allocations not supported by the extent of the services provided.¹⁴

The Commission should not credit the analysis first produced by Newport Water at the public hearing – essentially in the 13th hour¹⁵ – purporting to show that Newport Water’s city services costs were not dissimilar to those of Pawtucket and Providence. (See Newport Water Ex. 13, 14; May 27, 2009 Hrg. Trn. at 203:5-13.) First, Newport Water’s analysis excludes KCWA even though KCWA provides one of the most useful comparisons to Newport Water with respect to the cost of services that Newport Water obtains from the City. (See May 27, 2009 Hrg. Trn. at 224:14-225:11.)

Second, the effect of Newport Water’s analysis is to compare apples to oranges because it relies on comparing cost categories that may not be similarly defined from utility to utility. To take one example, Newport Water assigns seven employees to the customer service cost category, for a total salary expense of more than \$300,000. (See Smith Direct, RFC Schedule B-2.) Newport Water’s dilatory comparative analysis fails to show that these same types of employees would be classified as customer service employees at other utilities. (See May 27, 2009 Hrg. Trn. at 225:12-227:9.) Newport Water essentially conceded at the public hearing that its analysis instead relies on several unexplored assumptions about Pawtucket’s and Providence’s organizational structures. (See id. at 216:9-21, 225:17-24.) The better approach, given the evidence that has actually been produced and subject to fair examination by all the parties, is to compare each utility’s total allocation for city services to the overall operating expense claim. This method of comparison was first proposed by Mr. Smith in his rebuttal testimony (see p. 8:25-28) using a survey that was not put in evidence, and expanded on by Mr.

¹⁴ That Newport Water eventually halved its proposed city services allocation from the level purportedly derived from the cost allocation manual demonstrates the extent of the manual’s reliability and accuracy.

¹⁵ Newport Water provided a copy of the analysis to the other parties in the docket only minutes before its introduction into evidence, even though it had been created by Newport Water’s consultant as many as four days before the hearing. (May 27, 2009 Hrg. Trn. at 216:22-23.)

Woodcock in his surrebuttal testimony (see pp. 4-6) where actual data from comparable Rhode Island water utilities was offered. Under the comparative approach first suggested by Mr. Smith, Newport Water is distinguished by its relatively large allocation.

Third, Pawtucket actually has no employees associated with treatment and pumping because it relies instead on an operations contract for its workforce. (See May 27, 2009 Hrg. Trn. at 227:10-228:7.) Therefore, a comparison of Newport Water and Pawtucket, that relies upon a comparison of individual employees and their functions, would require that Pawtucket's operations contract be closely examined in order to determine how Pawtucket's contract workers compare to Newport Water's employees with respect to who performs which functions. (See id. at 228:8-229:8.)

For all of the foregoing reasons, the Commission should find that Newport Water's proposed allocation for City services is unreasonable, and adjust Newport Water's allocations as recommended by Christopher Woodcock on behalf of Portsmouth.

C. The Commission should direct Newport Water to employ reasonable methods to separately allocate costs related to pumping and treatment

In Docket 3675, Newport Water identified as separate operating expense categories (1) pumping costs for supply and distribution, and (2) pumping costs for treatment. In Docket 3818 and this Docket 4025, Newport Water has not identified these costs separately. While having no bearing on this docket, separate identification of these costs is important for purposes of the cost allocation study.

Portsmouth understands that Newport Water is not opposed to identifying these costs separately. In the response to Portsmouth's Data Request 4-4, Newport Water stated that it would "agree to keep these [pumping] costs separate from the treatment costs." At the public hearing, Newport Water agreed that it would track these costs separately "to the best of [its] ability." (May 27, 2009 Hrg. Trn. at 48:23-49:3.) The Commission should make this

understanding explicit so that Newport Water will have a clear understanding of its obligations regarding the tracking of these expenses. The Commission should order that Newport Water, or any private operator hired by Newport Water, maintain records identifying pumping costs for supply and distribution separately from pumping costs for treatment.

D. The Commission should direct Newport Water to reasonably share information regarding the replacement of the Lawton Valley Water Treatment Plant

Newport Water's Capital Improvement Plan includes construction of a new Lawton Valley Water Treatment Plant. Only Phase 1A of the Plan has been completed – an examination of strategic option for ownership and finance of the water system. (See Forgue Direct at 8.) Final design, testing, and startup of Lawton Valley's replacement will be July 2011 through August 2014. (See Forgue Direct at 40 (Project Schedule).) Given Portsmouth's historic concerns about the age of the water it receives from Newport Water, as well as the new facility's estimated \$39 million cost, the Commission should order that Newport Water reasonably share, as it is developed, information related to the planning, design, and construction of the replacement facility.

IV. CONCLUSION

Newport Water disregarded and violated the Commission's previous order by repaying the City with funds it took from the revenue requirement. Newport Water's own testimony and exhibits demonstrate that it did not realize any savings from efficiencies. Instead, since the previous docket, Newport Water generated substantial additional cash flow from increased water sales, the change to quarterly billing and deferrals of necessary expenses that had been approved by the Commission as part of Newport Water's revenue requirement. It used that additional cash flow to repay its debt to the City in violation of Order No. 19240. The Commission should not credit Newport Water's evasive and unsupported justifications for its

actions. Therefore, for all of the foregoing reasons, Portsmouth Water and Fire District respectfully requests that the Commission adopt the findings recommended herein.

Respectfully submitted,

PORTSMOUTH WATER AND FIRE
DISTRICT

By its Attorneys,

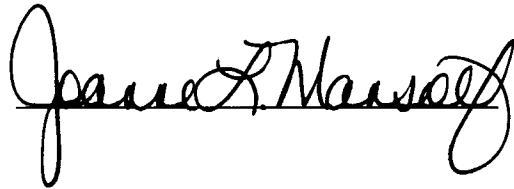


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Dated: June 18, 2009

CERTIFICATION

I hereby certify that I mailed a copy of the within **PORTSMOUTH WATER AND FIRE DISTRICT'S POST-HEARING BRIEF** to all parties set forth on the attached Service List on the 18th day of June, 2009.



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**Docket No. 4025 - City of Newport Water Division – General Rate Filing
Updated 4/27/09**

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