

David M. Marquez
dmarquez@haslaw.com

April 1, 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 No. 4025

Dear Ms. Massaro:

Enclosed for filing on behalf of Portsmouth Water & Fire District, please find an original and nine copies of the Prefiled Testimony of Christopher P.N. Woodcock.

Very truly yours,



David M. Marquez

DMM:jlw

Enclosures

cc: RIPUC Service List (electronically only)

963763 (38210/137951)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

RHODE ISLAND PUBLIC UTILITIES COMMISSION
DOCKET NO. 4025
CITY OF NEWPORT WATER DIVISION
PREFILED TESTIMONY OF
CHRISTOPHER P.N. WOODCOCK

1
2
3
4 **PREFILED TESTIMONY OF**
5 **CHRISTOPHER P.N. WOODCOCK**

6
7
8 **Q: Please state your name and business address?**

9 A: My name is Christopher P.N. Woodcock and my business address is 18 Increase
10 Ward Drive, Northborough, Massachusetts 01532.

11
12
13 **Q: By whom are you employed and in what capacity?**

14 A: I am the President of Woodcock & Associates, Inc. a consulting firm specializing in
15 water and wastewater rate and financial studies.

16
17
18 **Prior Experience**

19
20
21 **Q: Please describe your qualifications and experience.**

22 A: I have undergraduate degrees in Economics and in Civil Engineering from Tufts
23 University in Medford, Massachusetts. After graduating in 1974, I was employed by
24 the environmental consulting firm of Camp, Dresser, and McKee Inc. (CDM). For
25 approximately 18 months I worked in the firm's environmental engineering group
26 performing such tasks as designing water distribution and transmission pipes, sew-
27 er collection and interception systems, pumping facilities and portions of a waste-
28 water treatment facility. From approximately January 1976, I worked in the firm's
29 management and financial consulting services group, gaining increasing responsi-
bility. At the time of my resignation, I was a corporate Vice President and ap-
pointed the leader of the group overseeing all rate and financial studies. In my ca-
reer, I have worked on close to 400 water and wastewater rate and financial stud-
ies, primarily in the United States, but also for government agencies overseas. I
have also worked on a number of engineering and financial feasibility studies in
support of revenue bond issues, I have helped draft and review revenue bond in-
dentures, and I worked on several valuation studies, capital improvement financing
analyses, and management audits of public works agencies. In addition to my pro-

1 professional experience I have also held elected and appointed positions on municipal
2 boards overseeing public works functions.

3
4 **Q: Have you previously testified before state regulatory commissions or courts
5 on rate related matters?**

6 A: Yes, I have provided testimony on rate related matters before utility commissions in
7 Rhode Island, Maine, Connecticut, New York, New Hampshire, Texas, and Alberta,
8 Canada. I have also been retained as an expert witness on utility rate related mat-
9 ters in proceedings in state courts in Arkansas, Florida, Massachusetts, Michigan,
10 New Jersey, Maryland, Ohio, Virginia, and Pennsylvania, as well as the Federal
11 Court in Michigan. I have been selected to several arbitration panels related to dis-
12 putes over water rates and charges, I have provided testimony on rate related mat-
13 ters to the Michigan and Massachusetts legislatures, and I have provided testimony
14 at administrative hearings on a number of occasions.

15
16 **Q: Do you belong to any professional organizations or committees?**

17 A: Yes, I am a member of the Water Environment Federation, the Rhode Island Water
18 Works Association, the Massachusetts Water Works Association, the New England
19 Water Works Association, and the American Water Works Association. For the
20 Water Environment Federation, I was a member of the committee that prepared
21 their manual on Wastewater Rates and Financing. For the New England Water
22 Association, I am past chairman and a current member of the Financial Manage-
23 ment Committee. In my capacity as President-Elect for the New England Water
24 Works Association I also sit on the Executive Committee and the Board of Directors
25 as well as chairing and sitting on a number of other administrative committees. For
26 the American Water Works Association, I am past chairman of the Financial Man-
27 agement Committee and the Rates and Charges Committee that has prepared the
28 manuals on Revenue Requirements, Water Rates, Alternative Rate Structures, and
29 Water Rates and Related Charges. I have been reappointed to and am currently a
30 member of the Rates & Charges Committee.

1 **Summary**

2 **Q: What is your role in this proceeding?**

3 A: I have been retained by the Portsmouth Water & Fire District (Portsmouth) to re-
4 view the City of Newport Water Division's rate filing in Docket 4025. I was involved
5 in a similar capacity in Newport's last five rate filings.

6

7 **Q: Will you summarize your findings and conclusions?**

8 A: While the issues before the Commission have somewhat narrowed over the past
9 decade, several continue to be relevant in the context of this docket. I understand
10 that the cost of service study, which has been and continues to be an issue, is not a
11 part of the docket.

12

13 In this current docket, I am disappointed that many of the issues associated with
14 the proposed transfer of funds from the Water Division to the City's General Fund
15 for "City Services" have been brought back after the prolonged efforts and consid-
16 ered decisions by the Commission in past dockets. This proposed transfer was an
17 issue in several previous dockets and has not been resolved despite the investment
18 of considerable time and expense by the Commission and the various parties to
19 those dockets. In this docket, Newport is proposing an increase in the Legal and
20 Administrative allocation from \$219,177 to \$539,500 – this is a \$320,323 increase,
21 or 146%. In the case of the MIS or Data Processing Allocation, Newport is propos-
22 ing an increase from \$156,368 to \$226,000 – this is a \$69,632 increase, or 45%.

23

24 Of the total proposed increase in revenues (\$2,690,396 – RFC Sch 7), the in-
25 creased transfers of \$389,955 to the City represent 14.5% of Newport's proposal.

26

1 **City Services**

2 **Q: Please discuss your concern with the increase in the transfer of revenues to**
3 **the City General Fund for “Legal and Administrative Expenses.”**

4 A: As I mentioned, this item along with Data Processing has increased substantially.
5 The new allocations are based on a cost allocation manual that appears to have
6 been written primarily by the City’s Finance Director, Ms. Sitrin¹. The manual is
7 used to determine the charges to various departments by the City of Newport, and
8 provides a brief description of various departments to be allocated and the basis for
9 the allocations.

10

11 **Q: In response to PWFD 1-4 Newport claims that the cost allocation manual con-**
12 **forms to the Commission’s ruling in Docket 3818. Do you agree?**

13 A: No I do not.

14 1. Newport has proposed using an allocation for many administrative offices that
15 is based on the water budget as a percentage of the total City budget, ex-
16 cluding the school and library budgets. This issue was a significant element
17 of the last rate case and the Commission included the budget amounts for
18 the School and Library departments in the determination of the 10.39% allo-
19 cation that was allowed in Docket 3818, which Newport has ignored in this
20 case.

21 2. As noted in their response to PWFD 1-13, Newport has included nearly \$8
22 million of “budgeted items” that are not part of this rate case. It was very
23 clear in Docket 3818, and prior dockets where this matter was litigated, that
24 the approved revenue requirement was the appropriate number for the Wa-
25 ter Department budget – not the inflated budget number that adds nearly 2/3

¹ While the response to PWFD 1-1 indicates that Mr. Esten, the Water Department’s Assistant Director of Finance had some input or role, the Manual states “Prepared by: City of Newport, Finance Department, 2008”.

1 to the regulatory revenue requirements. This change from the ruling in the
2 last docket has an enormous impact².

- 3 3. The Commission found that only 10.39% of the individual base salaries³ of
4 the City Manager and City Council members should be borne by rate payers.
5 Newport has included some \$60,000 of additional costs for the City Council
6 over and above the \$16,000 stipends. There is nothing in the Commission's
7 order in the last case making allowances for the Council "benefits, dues,
8 subscriptions and office supplies" that have been added by Newport in this
9 docket. In the case of the City Manager's office, Newport has included hun-
10 dreds of thousands of dollars of expenses above the base salary. Neither of
11 these inclusions conforms to the ruling in Docket 3818.
- 12 4. In both prior dockets, PWFD presented evidence demonstrating that the
13 Newport City Clerk's office had little, if any, involvement in the affairs of the
14 Newport Water Department. The Commission found that "allocating 1% of
15 the City Clerk's Office budget to Water is fair and reasonable." In Docket
16 3818 this resulted in an allocation of \$2,735. In this docket, Newport Water
17 has ignored those findings and simply assigned costs based on the City
18 Council allocation (which also was not in conformance with the last docket).
19 The result is an increase in the rate payer funds assigned to the City Clerk
20 from \$2,735 to \$36,446. This does not conform to the Commission's ruling
21 in Docket 3818.
- 22 5. In the prior docket, in recognition of the considerable finance staff that New-
23 port Water has, only half the cost of the City Finance Department was allo-
24 cated based on the 10.39% budget allocator. That was not done in this
25 case. In fact 20% of the City Finance Department was broken out and as-
26 signed an even greater percentage than water budget as a percentage of the

² Just this one change in the allocation percentage reduces the City Manager, City Solicitor and Finance Department allocations by more than \$71,000.

³ Stipend for Council members.

1 total City budget. This does not conform to the Commission's ruling in
2 Docket 3818.

3 6. Public Safety costs were not even a part of prior filings. This is a totally new
4 "cost" that I believe is an unauthorized tax.

5
6 **Q: The cost of several of the City's offices is proposed to be allocated based on**
7 **the percentage of the Water Department budget to the total City budget. Do**
8 **you agree with this method?**

9 A: There are three such offices where this is proposed: the City Manager (\$93,237),
10 the City Solicitor (\$64,486), and part of the Finance Administration (\$69,213)⁴ plus
11 the MIS "Other Costs". In total these allocations amount to nearly \$227,000 or 41%
12 of the total Legal and Administrative allocation that NWD has proposed; it is more
13 than the total allocation for Legal and Administrative allowed in Docket 3818. In the
14 case of the MIS allocations, the MIS "Other Costs" represent nearly \$200,000 of the
15 total \$225,000 of MIS allocations.

16
17 I am also concerned that the base to which NWD is applying this percentage is not
18 just the base salary as was ordered in the prior docket.

19
20 However, my biggest concerns are (1) the manner in which Newport has developed
21 the overall budget percent and (2) the extreme deviation from prior filings. For the
22 water budget, NWD has not used the revenue requirement it has requested in this
23 case as it did in the prior dockets. Rather, they now propose to use a "water
24 budget" that is nearly 2/3 higher than the request in this docket (\$19.9 million vs.
25 \$12.0 million). For the proposed water budget of \$19.9 million they have included
26 over \$8.3 million of "capital funded fixed assets", \$1.3 million of depreciation,
27 \$250,000 for repayment to the City that has been completely repaid, and \$1.8 mil-
28 lion of "O&M spending difference". The basis for the water budget includes items
29 that have never been considered before, are non-regulatory, are duplicative, or

1 have been fully paid for. This only goes to inflate the general fund expenses allo-
2 cated to the rate payers.

3
4 In addition, the base for the total City budget excludes the school and library budg-
5 ets. This issue was litigated in the last docket, and the Commission determined
6 that these departments should be included as part of the overall City budget. Once
7 again, this inflates the allocation of general fund expenses to rate payers.

8
9 Based on Newport's calculations, the Newport Water Department accounts for
10 more than 22% of the City of Newport's total government expenses. That is clearly
11 out of line when compared to similar municipalities in Rhode Island like Woon-
12 socket and Pawtucket.

13
14 **Q: You mentioned that Newport had excluded the school and the library budgets**
15 **from its calculations. Do you have any further comments on that?**

16 A: Yes I do. As I mentioned earlier, this was litigated in prior dockets and it was the
17 subject of considerable testimony. In Docket 3818, the Commission determined
18 that these departments must be included in the City budget. Newport has offered
19 no new evidence to suggest why this should be changed. They have simply re-
20 peated testimony, already rejected by the Commission in prior dockets, that the City
21 Council has no authority or responsibility for those functions of City government.

22
23 In response to PWFD's data request 1-9, Newport provided a listing of City Council
24 meetings and workshops. In FY 2007 the Newport City Council held a joint pre-
25 budget meeting with the School Committee, met with the School Committee in a
26 workshop to discuss the School Budget, and held a council workshop to discuss the
27 public library budget. Those departments were the *only* departments discussed at
28 those meetings. In other words, the Library Budget was the focus of one full meet-
29 ing, and the School Budget was the focus of two full meetings. In comparison, the

⁴ As adjusted by corrections on PWFD 1-14

1 workshop meeting with the Water budget also included: Police, Fire, Public Ser-
2 vices/Equipment Operations, Water Pollution, Special Events, Economic Develop-
3 ment, Harbor Maritime Fund, Beach Fund, and Parking Fund. This does not ap-
4 pear to be a situation where there is no "authority or responsibility" vis-à-vis the Wa-
5 ter Fund.

6
7 In my review of the City Council minutes I also noted that they discussed bid
8 awards related to the Library (not unlike those associated with the Water Division).

9
10 I have also looked at the Newport School Department's web site. I noted that the
11 ad hoc School Building Committee includes two City Councilors as well as the Fi-
12 nance Director, Ms. Sitrin. While I did not review all the school committee minutes I
13 quickly found minutes where the City Manager and City Finance Director attended
14 and participated in the School Committee meeting (January 7, 2009). Clearly there
15 is some level of involvement and support from the Council, the Manager and the
16 Finance Director.

17
18 The response to PWFD 1-15(e)(2) shows numerous school accounts presumably
19 under the control of the Finance Department.

20
21 I believe the testimony and evidence in prior dockets make it clear that the Library
22 and School department budgets should be included in the overall budget when de-
23 termining the budget ratio for the Water Fund. There is no new evidence in this
24 docket that should alter the Commission's prior conclusion that they should be in-
25 cluded. To the contrary, there is new evidence of multiple City Council and School
26 Committee meetings that support the inclusion of the School and Library budgets in
27 the total City budget.

1 **Q: What do you recommend as the basis for the allocation of the offices of the**
2 **City Manager, City Solicitor, and Finance Administration??**

3 A: I recommend that the Commission determine the percentage of the water budget to
4 total city budget based on the allowed revenue requirements in this docket for the
5 Water Division as compared to the City's 2009 budget including the schools, library,
6 and civic support requests. If a similar FY 2010 City budget is available prior to the
7 conclusion of this docket, I would agree to substitute that for the FY 2009 budget. I
8 think that the Commission will set a reasonable revenue requirement in this docket
9 that should form the basis for the water budget.

10

11 In addition, the base amount used for the City Manager's office should be as de-
12 termined by the Commission in the last docket – the base salary of the City Man-
13 ager. In the case of the City Solicitor, the Commission determined that only 50% of
14 the City Solicitor's office should be used as a base in recognition of the fact that
15 Newport Water receives considerable advice from outside Counsel (Mr. Keough) at
16 a considerable (but commensurate) cost to the rate payers.

17

18 Finally, this corrected budget allocation percentage should also be used for MIS
19 "Other".

20

21 **Q: Hasn't Newport already eliminated some of the costs of the Solicitor's office**
22 **in its calculations?**

23 A: Yes it has; however these are judges or attorneys for the municipal court and have
24 nothing to do with other City departments. The remaining personnel and costs may
25 have some services they provide, but as I mentioned earlier, the Water Department
26 employs outside counsel for a considerable amount of work (nearly \$62,000 ac-
27 cording to RFC Schedule B-1)

28

1 **Q: Why should only half the Finance Administration cost be used as a base to al-**
2 **locate costs to the Water Division?**

3 A: In looking at RFC Schedule D it can be seen that the City proposes to allocate 80%
4 of the Finance Administration cost based on the ratio of a department's budget to
5 the City budget. This was done for the water, water pollution control, maritime,
6 beach, and parking enterprise funds of the City. In response to PWFD 1-5 the City
7 acknowledges that of these five enterprise funds, only the water fund has full time
8 financial analyst and the water fund and water pollution control fund share the As-
9 sistant Director of Finance with the water fund picking up 60% of that person's sal-
10 ary. It makes little sense that the fund with 1.6 finance personnel should be allo-
11 cated the same base costs as a fund with 0.4 finance personnel or 0.0 finance per-
12 sonnel. Under Newport's proposal⁵ the various enterprise funds of the City of New-
13 port would pay the following for their own finance personnel plus an allocation of
14 the City Finance Department. (see PWFD 1-15)

15	Water	\$192,852
16	Water Pollution	79,247
17	Maritime	6,859
18	Beach	4,718
19	Parking	7,286
20		

21 The disparity between the water fund and water pollution fund is particularly striking
22 as the FY 2010 water pollution budget and the rate year water fund revenue re-
23 quirement are very similar.

24

25 **Q: Newport has also proposed to allocate 10% of the Finance office based on the**
26 **number of water division bank accounts to total accounts. Do you agree with**
27 **this calculation?**

28 A: While there is no information or basis provided in the cost allocation manual or the
29 prefilled testimony for 10% of the Finance Department costs being associated with
30 investments (5%) or debt (5%) I have no other information to base an allocation on

⁵ As amended in corrected PWFD 1-14

1 and have accepted this for purposes of this docket. Newport allocated this cost
2 based on 14 water division bank accounts as compared to 45 total accounts re-
3 ported in the response to PWFD 1-15(e)(1). Based on the follow-up question in
4 PWFD 2-6 it seems that three of the 14 water accounts are not held by the City, but
5 by the Trustee (Wells Fargo Bank) who would handle the investments for those ac-
6 counts⁶. Further, the Water Repayment account was closed after the last repay-
7 ment and no longer exists. Accordingly, there are not 14, but 10 water division
8 bank accounts where investments must be overseen by the Finance Department.

9
10 A review of the water accounts provided in response to PWFD 1-15 (e) shows that
11 many have little or no funds in them to invest (water checking, accrued benefits
12 buy-out, billing charges⁷) or have prescribed investments (RIDOT escrow). There
13 are perhaps only six water accounts that require the Finance office to oversee in-
14 vestments. The water accounts that need any attention from finance thus make up
15 only 16.2% of the accounts (6/37) not the 31% claimed by the City.

16
17 **Q: Do you have any other comments on the allocation of the Finance Depart-**
18 **ment?**

19 A: Yes. I also thought it was instructive to note that the Auditors spent about 6% of
20 their time on the water department books and records while NWD's proposal has
21 the Finance Department spending about 21%⁸ of its time allocated to the Water Di-
22 vision.

23

⁶ The investments for these accounts are prescribed in the SRF Loan documents.

⁷ Proposed to be eliminated.

⁸ 22.5% of 80% of the Finance Office plus 31% of 10% of the Finance Office

1 **Q: Newport has proposed allocating the City Council time and City Clerk time**
2 **based on the items addressed at Council meetings in a fiscal year. Do you**
3 **agree with this allocation?**

4 A: No I do not. Newport's proposed allocation for these two offices amounts to more
5 than \$45,000. This compares to the \$4,397 the Commission found reasonable in
6 Docket 3818.

7

8 I think that both the new base amounts for the offices and the new percentage pro-
9 posed by Newport to allocate those costs are unreasonable. The Commission
10 found that for the City Council, only the base salary or stipend should be allocated
11 (some \$16,000). Newport has added far more than this, proposing to allocate near-
12 ly \$77,000 of City Council costs in this docket.

13

14 **Q: You indicated that you disagree with the 11.4% of items addressed at the City**
15 **Council meetings as well. Can you explain this disagreement?**

16 A: Yes. In response to PWFD 1-10, Newport provided a listing of items discussed at
17 City Council meetings from the City Council agendas for FY 2008. In general, they
18 looked at the minutes of City Council meetings and added up the numbered items
19 related to the Water Division and compared those to the total of numbered items.
20 There are three problems that I have identified with this.

21 • First, the numbered items are not a good representation of the items the City
22 Council considers and discusses. For example, the first item (#1) in each set
23 of minutes is a listing of issues or topics under a consent agenda. At virtually
24 every meeting there are a number of these topics or items that are removed
25 from the consent agenda. These topics or items are then individually dis-
26 cussed and voted on by the Council. They are listed in the minutes as 1b),
27 1d), 1f), or 1g), for example. Under Newport Water's calculations all these
28 individual topics are included as one single item within the consent agenda.
29 In fact, the minutes may have numerous pages of discussions and votes on

1 many different items that are all counted as only one in Newport's calcula-
2 tions.

- 3 • Next, there is no weighting or consideration of the time or resources devoted
4 to various items. My review of the FY 2008 minutes showed that just about
5 every one of the 53 "water items"⁹ identified by the City had to do with a
6 communication and/or award of a bid. As an example, the September 12
7 City Council meeting lists 2 of the 24 "items" (8%) as related to water. Those
8 two items account for a mere 8 *lines* in the agenda out of a total of 11 *pages*.
9 A review of this set of minutes clearly shows that the City Council did NOT
10 spend 8% of its meeting on water related matters. This is not an atypical set
11 of minutes; it is true for nearly all 22 Council meetings in FY 2008. The time
12 spent on water related items is nowhere near 11.4% of the City Council's
13 meeting time.
- 14 • Lastly, the Council often goes into executive session to discuss matters.
15 There is no accounting for this time or the items they may discuss in Execu-
16 tive Session.

17
18 **Q: Did you have any other comments on the methodology used to allocate the**
19 **City Council and City Clerk time to rate payers?**

20 A: Yes. There are two additional reasons I think the calculation based on *items* is
21 flawed. First, the Council is also the City Licensing Commission. In this role they
22 often meet and discuss licenses. While the "Licensing Commission" meetings are
23 typically quite short, it is an additional function of the City Council involving other
24 items.

25
26 In reviewing the information provided with the City Council minutes I also reviewed
27 the listing of City Council Meetings and Workshops for the fiscal year. As noted
28 earlier, there were 22 formal City Council meetings in FY 2008. There were also

⁹ I could not find all of these.

1 some 44 other meetings, sessions, workshops or events involving the City Council.
2 These are not accounted for at all in the City's calculation of time spent on water
3 matters.

4
5 **Q: Do you have a recommendation regarding the allocation of City Council and**
6 **City Clerk time?**

7 A: I believe only the base stipend for the City Council should be allocated to various
8 departments as was decided by the Commission in Docket 3818. I further believe
9 that the allocation percentage based on "items" in the minutes is flawed and that far
10 less than half that time is reasonable. I have proposed to use 5% of the time,
11 which is slightly less than half the 11.4% proposed by Newport based on "minutes
12 items". This seems reasonable given the minimal Council time that is spent on the
13 Water Division.

14
15 In the case of the City Clerk's office, I believe the Commission is aware of our his-
16 toric attempts to get records related to the Water Division from the Clerk's office. I
17 believe the 1% determined by the Commission in Docket 3818 is also more than
18 reasonable.

19
20 **Q: Do you agree with Newport's proposal to allocate 8.3% of the cost of Citizen**
21 **Survey's to the Water Division?**

22 A: I do not. We asked for the basis of this calculation in PWFD 1-12 and were told
23 that the Citizen Survey had 12 questions and one was related to the Division, thus
24 1/12 or 8.3%. As a follow up we asked for a copy of the survey with 12 questions
25 (PWFD 2-12). In response we were provided a 2006 City of Newport Community
26 Survey. This survey had 18 numbered questions plus an optional space for com-
27 ments. Question #1 had 6 subparts, question #3 had 4 subparts, question #5 had 6
28 subparts, question #7 (1 ½ pages) had 56 subparts, five of which were concerned
29 with water, question 13 had 2 subparts. In total there were about 87 questions with
30 5 related to water or about 5.7%. In addition this was a 2006 survey. I am not sure

1 what was done in 2007 or 2008 or if a survey is even planned for 2009 or 2010 (the
2 rate year). While this is a minor item in terms of dollars, the claims for expenses
3 and the amounts related to water are suspect. Because there may be a survey and
4 some questions may relate to water, I have provided for 5% of the budget for this
5 item. I would like to know if there are any surveys planned for 2009 or the rate
6 year. If not, perhaps this line item should be deleted.

7
8 **Q: Newport has proposed to allocate the costs of its Human Resources Division
9 based on the number of full time equivalent employees. Is this reasonable?**

10 A: Because this Division also represents 150 seasonal employees, I believe these
11 should also be included in the calculations. I do not know if any of the 150 sea-
12 sonal employees are related to the Water Division; if there are, I will reflect it in sur-
13 rebuttal testimony if the City does not in its rebuttal testimony. For purposes of this
14 testimony I have assumed no seasonal water employees and determined that the
15 FTE water employees represent some 9% of the total of all City FTE and seasonal
16 employees, rather than the 12.9% proposed by Newport.

17
18 **Q: Do you agree with Newport's proposed allocation of purchasing costs?**

19 A: Newport has proposed allocating this department based on the number of purchase
20 orders. Newport determined that 17.9% of the purchase orders were related to the
21 water division. Based on my review of this calculation, it was apparent that there
22 are numerous purchases listed multiple times with the same purchase order num-
23 ber. I believe that counting these multiple numbered items as individual purchases
24 gives too much weight to individual "subpurchases". Instead, unique purchase or-
25 ders should be used. In response to PWFD 2-8, Newport has claimed that there
26 are 307 unique water purchase orders out of 1,647 total unique purchase orders or
27 18.6%. Although this is an increase from that proposed by Newport, I propose that
28 this be used as a better indicator of the support from the purchasing department.

1 **Q: Newport has proposed allocating 10% of the Assessor's office to the water**
2 **division "based on his years of experience".¹⁰ Do you agree with this?**

3 A: No, I do not. This allocation was reportedly based solely on the Assessor's "years
4 of experience"; there was no objective measurement or means to verify this.
5 PWFD requested a quantifiable basis in PWFD 2-9. In response, Newport sug-
6 gests that the preparation of tangible property declarations cost about \$1250. This
7 is based on 8 hours of time (rounded up to 10 hours) at \$125/hour.

8
9 Based on the City of Newport's approved FY 2009 budget, the salary plus benefits
10 for the four people in the Assessor's office is \$312,094. This averages about
11 \$78,000 per person per year or \$37.50/hour. It is unclear who does all the work
12 discussed in the response to PWFD 2-9. If it is the Assessor that does all this
13 work, the cost per hour is about \$55. (According to the rate filing the Assessor's
14 salary and benefits amount to \$113,456 or about \$55 per hour.) In any case, this is
15 far less than the \$125 used in Newport's response to quantify the cost of the As-
16 sessor's office. Based on a cost of \$55/hour and the estimated eight hours for the
17 tangible property declarations, the cost for this service is only \$440 per year. It is
18 the only tangible service that Newport has claimed that is performed on an annual
19 basis.

20
21 According to the Assessor in the Town of Portsmouth, the declaration forms are the
22 same each year and Newport rarely revises them. The forms are designed so they
23 do not have to be filled out by the Assessor; the Water Division can do this. Ports-
24 mouth's Assessor was surprised to hear the suggestion that these standard decla-
25 ration forms would take 8-10 hours.

26
27 Even assuming 8 hours at \$55/hour, a cost of \$440 seems to be the most that
28 Newport could justify for the preparation of these standard forms.

29

¹⁰ PWFD 1-15(g)

1 **Q: Did you also look at the second part of Newport’s response regarding valua-**
2 **tions, the services provided every three years?**

3 A: Yes. It seems clear that Newport has tried to justify this allocation of costs based
4 on assumptions regarding the *value* of the service provided – not the *cost*. I do not
5 believe it is appropriate in this case for Newport to assign costs from various City
6 Departments based on what they determine the “value” of the service is. The
7 Commission should only be looking at the actual cost. Clearly \$125/hour for the
8 Assessor is NOT a cost.

9

10 This second part of the cost for the Assessor’s time has to do with the evaluations
11 and reviews of the 25 parcels of land that take place every three years. Newport
12 has suggested that these services are *worth* approximately \$37,250 or \$12,400 per
13 year. Again, Newport has provided a worth or value for appraisal services based
14 on outsourcing the appraisal work. There is no indication that the City does this for
15 the Water Division parcels. Assigning costs to rate payers based on estimated val-
16 ues of appraisals is not proper. Further, I believe that the suggested outsourcing
17 costs are grossly overinflated.

18

19 **Q: In light of your testimony, what is your recommendation with regards to the**
20 **cost of the Assessor’s Office that should be assigned to the Water Division?**

21 A: I believe that a cost of \$200 per parcel for a review of a revaluation is more than
22 reasonable. These properties do not change drastically each year and should not
23 take more than 4 hours each at \$55/hour. For the 25 parcels this would amount to
24 \$5000 every three years. Likewise, the Water Treatment Plant does not change
25 significantly over the course of three years. I have provided \$4000 for this valuation
26 review every three years (nearly two weeks of the Assessor’s time). Lastly I also
27 included 9 hours of meetings (3 hours for each town) every three years. The total
28 cost every three years for a review of the valuations is thus \$9,495 or \$3,165 per
29 year on average.

30

1 The annual cost of the revaluation reviews (\$3,165) plus the annual cost of the
2 preparation of the declarations (\$440) is approximately \$3600. This represents
3 about 3.2% of the Assessor's time.

4
5 **Q: Do you agree with Newport's proposed allocation of the Collector's Office?**

6 A: No I do not. In response to PWFD 1-15(h) Newport provided a printout from the
7 Tax Collector that showed the numbers of various activities for FY 2007 and FY
8 2008. Based on the handwriting on that response, Newport used the FY 2007 data
9 to determine that water (and sewer) collections were about 41% of the total office
10 costs, with water being half that or 20.5%.

11
12 Based on that response and the response regarding other activities of the depart-
13 ment that were not included in Newport's calculations, I believe the appropriate
14 number for FY 2008 (the more recent year) is 16.17% of the costs.

15
16 **Q: How did you arrive at that value?**

17 A: For FY 2008 I added the number of tax payments processed (68,038), the number
18 of water (and sewer) collections (64,454), the number of tax notices (19,227), num-
19 ber of MLC's issued (861), the number of ticket collections (29,389), the number of
20 parking permits (13,800 from PWFD 2-10), and the number of fishing permits (62
21 from PWFD 2-10). I did not include delinquent notices based on Newport's re-
22 sponse to PWFD 2-10. The total number of "activities" was 194,176; the water
23 (and sewer) bills were 32.34%. Half of this is related to water or 16.17%.

24
25 **Q: Newport has proposed to allocate 16.9% of the Accounting Division cost to**
26 **the Water Division based on the number of payroll and vendor checks. Do**
27 **you agree with this?**

28 A: I do not. First, I am concerned about the description of the services provided by this
29 division in the cost allocation manual. That manual lists five responsibilities: only
30 one is related to processing vendor and payroll checks. The other four have to with

1 employee's taxes and reports or overall budgets. Further, there is no mention in
2 the cost allocation manual of "preparing regulatory reports for the City and School
3 District" – a duty that is clearly presented on page 138 of the City's 2008-2009
4 budget. While the testimony consistently suggests that the Newport Schools are
5 not a part of the City government and should be ignored in calculating the cost of
6 services provided to the Water Division, City documents and records indicate dif-
7 ferently. In addition, "administration, processing and reporting" of the Police and
8 Fire pension plans is clearly mentioned on page 156 of the City's 2008-2009 budget
9 but this is not reflected in the proposed allocation.

10
11 Newport has proposed assigning nearly \$65,000 of costs for this division of the Fi-
12 nance Department. More consideration appears to have been given to many other
13 departments and divisions, yet this is the fourth highest allocation, essentially equal
14 to the 2nd and 3rd highest. There is nearly \$400,000 of costs that are 98% salary re-
15 lated.

16
17 Newport's proposed allocation would suggest that this \$400,000 cost should be al-
18 located based on issuing 11,626 checks. The implication of this suggestion is that
19 the five people in this division can issue about 50 checks per day or 10 checks per
20 person at cost of over \$30/check. The Commission thus is being asked to accept
21 that the entire cost should be allocated based on 10 checks per person per day,
22 which does not seem reasonable.

23
24 I also noted that the total cost of the Accounting function does not match the
25 amount in the City's budget. The total budget of this Division is \$383,700. I re-
26 moved 5% for the portion separately allocated for water, and have used the remain-
27 ing 95% as the basis for my proposed allocation.

1 **Q: What do you suggest as the basis for allocating the cost of this division of the**
2 **Finance Department?**

3 A: I am not certain what the best method is. In the last docket, the Commission used
4 the water budget as a percentage of the total budget (including schools and libraries
5 ies) as a basis. In the Commission's Order in Docket 3818 the City was warned
6 that if the cost allocation manual was not filed, the City risked the Commission de-
7 nying future requests for city service allocations. In this case, I believe the manual
8 is not a fair or proper reflection of services from this division and, in any event,
9 lacks support for its methodology. Were this a minor cost division it would not be
10 as large an issue, but it accounts for 12% of the City's proposed allocation of City
11 Services or nearly \$65,000. Considering all the deviations from the prior Order and
12 the issues I have raised in regards to the City's proposed allocations, I do not think
13 it would be unfair to deny this allocation until the City provides a better or more ap-
14 propriate method of allocating this cost. It is the City's burden to prove its case,
15 and in this instance it has failed. If the Commission considers this too harsh, I
16 suggest that the percentage of budget value used in the last docket and updated in
17 this one be used, but cut in half to reflect the City's failure to meaningfully comply
18 with the Commission's Order in Docket 3818.

19

20 **Q: Newport has proposed a new allocation – to charge the Water Division for po-**
21 **lice and fire services. Do you agree with this?**

22 A: No I do not. This is a thinly veiled tax that the City is not authorized to levy. In ef-
23 fect, Newport is proposing to charge some tax exempt properties for governmental
24 services that are tax supported. To make matters worse, they are not proposing to
25 charge all such properties, only some fee supported governmental enterprise funds
26 from which money can be transferred to the City's General Fund. This isn't surpris-
27 ing, since Newport is undoubtedly aware that they cannot charge churches, schools
28 and other tax exempt properties for police and fire service.

29

1 Police and fire protection are not like the other services that are being provided by
2 the City to the Water Division; other tax exempt properties in the City do not get
3 personnel assistance, purchasing support, or financial assistance like the Water Di-
4 vision. Further, the Water Division does pay for the cost of Police Details assigned
5 to construction projects.

6
7 The Commission should not allow this unauthorized tax that Newport is proposing.

8
9 **Q: The final City General Fund items that are being proposed an allocation to the**
10 **Water Division relate to the MIS Division. Do you have a comment on those?**

11 **A:** I also have several problems with these proposed allocations.

12
13 First, the costs proposed to be allocated add up to \$1,215,132; the total budget for
14 the MIS Division as shown on the City's web page is only \$1,171,857. This budget
15 of \$1,171,867 includes postage of \$45,000. As noted in the City's budget, the Wa-
16 ter Division is the only Division that pays its own postage. This cost should certainly
17 be deducted from the amount allocated. The City's cost allocation manual indi-
18 cates that "45% of the maintenance and hosting costs related to the ERP system
19 should be specifically assigned to the School Department" – it is not clear where
20 this reduction to the MIS budget is made. Further, the cost allocation manual sug-
21 gests that the "City has contracted support out to the hosting company and is no
22 longer done by City staff"; this adjustment does not appear to be reflected either.

23
24 As with the City's other proposed allocations based on budget, Newport has ex-
25 cluded the school and library budgets from the 22.55% allocation factor it proposes.
26 As with other claims of no involvement with the schools, this does not seem to be
27 the case with the MIS Division. On page 149 of the City's Budget it clearly states
28 "All Municipal and School Department software modules ... are supported on vari-
29 ous computer systems that are the responsibility of the MIS Staff." It also says that

1 "In addition ... the MIS Staff trains and assists over 200 users in all Departments"
2 (emphasis added) – this certainly appears to include the Schools.

3
4 There are a number of adjustments that do not appear to have been made by the
5 City in accordance with its own manual. I cannot make a firm recommendation
6 without knowing some of these adjustments, but I suggest that the total costs be
7 revised to reflect some of these adjustments and that the overall allocation be
8 based on the percentage of water budget to total city budget including the school's
9 and library's.

10
11 **Repayments to the City**

12 **Q: Is Newport looking to reimburse the General Fund for past expenses in this**
13 **case?**

14 A: Yes it is. On page 5 of Ms. Forgue's prefiled testimony she has asked the Com-
15 mission to allow Newport to use any excess funds from its triannual billing to repay
16 the City for outstanding payables.

17
18 **Q: Do you agree with Newport's request to repay the City of Newport for what**
19 **are essentially borrowed funds?**

20 A: No I do not. There are several reasons I disagree.

- 21 – In Docket 3578, the City of Newport agreed that they would not try to collect
22 anything borrowed from the City through June 30, 2005
23 – As I testified in prior dockets, a large part of the reason that so much is
24 owed to the City was self-imposed by the City of Newport. Newport delayed
25 its previous filing and neglected to pro-rate the increase on retail water bills.
26

1 **Q: Do you believe that any losses prior to June 30, 2005 should be excluded**
2 **from recovery and not paid back to the City?**

3 A: Yes I do. An explicit provision of the settlement and Commission's Report and Or-
4 der in Docket 3578 (item 17A) said:

5 "The amount owed by the Water Department to the City of Newport for
6 loans prior to July 1, 2003 shall be limited to the \$2.5 million dollars
7 claimed in this Docket. The parties agree that Newport Water may re-
8 pay this \$2.5 million dollars advanced by the City of Newport. Repay-
9 ment shall be made out of the debt service fund at the rate of
10 \$500,000 per year for a period of five years. The parties have allo-
11 cated revenue of \$250,000 to be paid into the debt service fund spe-
12 cifically to offset a portion of this repayment to the City. Therefore, if
13 the Commission approves the request to make the change in restricted
14 account funding effective July 1, 2003 as proposed in Paragraph 16,
15 the initial installment of the repayment will take place in the rate year
16 ending June 30, 2004. This repayment shall be without interest.
17 *Newport Water further agrees that it will not seek to recover in rates*
18 *any additional monies that it may borrow from the City of Newport up*
19 *through and including June 30, 2005. Newport Water agrees that*
20 *should the City of Newport loan money to Newport Water after June*
21 *30, 2005, said loan shall be reflected by appropriate documentation*
22 *and Newport Water shall have the duty to monitor and track its costs*
23 *and properly account for how the loan proceeds are applied." (em-*
24 *phasis added)*

25
26 Further the Commission's Report and Order in Docket 3578 said:

27 "Addressing the repayment to the City, Mr. Catlin explained that the \$2.5
28 million is a fixed amount and that Newport Water will be precluded from
29 requesting additional funds in the future. The witnesses agreed that they
30 could not accurately calculate upon what costs the funds were expended.

1 Mr. Catlin indicated that at least two factors led to the loans. The first is
2 that O&M expenses have grown since the last rate case and the second is
3 that certain capital outlays were treated as O&M expenses while the funds
4 were deposited into the restricted capital outlay account.”

5
6 Ms. Fogue has testified that Newport Water Department payables as of June 30,
7 2005 were \$709,421¹¹. This is also verified in Newport Water’s 2005 Annual Re-
8 port to the Commission. In accordance with the settlement agreement that was
9 agreed to by the City and approved by the Commission, none of this should be re-
10 imburSED to the City.

11
12 **Q: Is there any other evidence you can offer as to why \$709,421 of moneys owed**
13 **to the City as payables on June 30, 2005 should be excluded from repayment?**

14 A: Yes. I would also point to the transcript of June 2, 2004 in Docket 3578. On page
15 32, the Division’s witness, Mr. Catlin was discussing the \$2.5 million that was to be
16 repaid to the City.

17 “That was an important aspect of this for all parties because we
18 wanted to fix the amount at the 2.5 million that would be owed to the
19 City of Newport and the settlement sets forth some strict require-
20 ments as to the fact that that’s what we’re going to repay, that’s what
21 we’re going to ask the ratepayers to repay and *to limit it to that* and if
22 that needs to be changed, Newport would have to come to this
23 Commission and say, ‘We need to change and here’s why.’ It won’t
24 just be allowed to – in the next case or at some point in time to say,
25 ‘Oh by the way, we owe them another million or another \$500,000.’
26 That was an important aspect for each of the parties in this case.”
27 (emphasis added)

28

¹¹ See Docket 3818 Hrg. Trn. (July 24, 2007), at 149:23-150:3, attached as Exhibit A.

1 That "Oh by the way" is just what has happened. Newport has paid its pre-June 30,
2 2005 payables to the City and has not had sufficient revenues to catch up. As a re-
3 sult it has a continuing amount payable to the City. This continuing payable is really
4 because they used rate payer funds to pay off the pre-June 30, 2005 amounts.

5
6 **Q: Do you have any support for this claim?**

7 A: I believe that the support was provided in Ms. Forgue's prefiled testimony in Docket
8 3818 – on page 6, where she testified "... Newport Water was in the position of
9 paying for fiscal year 2005 expenditures from fiscal year 2006 revenue." Newport
10 Water agreed not to try and collect through rates any amounts it had to borrow from
11 the City through June 30, 2005 and it should be held to that agreement.

12
13 **Q: In your opinion was there any ambiguity about Newport paying back any addi-
14 tional deficits or loans prior to June 30, 2005?**

15 A: I think Commission Counsel Wilson's questioning of then Newport City Manager
16 Smith and the comments by counsel in the transcript of the June 2, 2004 hearing
17 made the understanding quite clear (see pages 64-66)

18 MS. WILSON: Now looking at the settlement ...the sentence that starts
19 with "Newport Water further agrees that it will not seek to recover in rates
20 any additional monies that it may borrow from the City of Newport up
21 through and including June 30, 2005 which is the next fiscal year: Now, I
22 thought from the surrebuttal testimony and from what I heard this morning
23 that the city will not be loaning any additional money to the water depart-
24 ment. Is that true?

25 MR. JAMES SMITH: Yes

26 MS. WILSON: So then what is the purpose of this line?

27 MR. KEOUGH: Maybe I can take that since the lawyers put this together.
28 I think it was just to memorialize what we had talked about, that, in fact,
29 there weren't going to be any more loans. I don't know if maybe Mr. Wold

1 and Mr. Catlin remember exactly how that all went, but I believe that that
2 is just memorializing what we, in fact, discussed at the conference.

3 MR. PETROS: I think Portsmouth asked for that and lawyers have an ex-
4 pression called belts and suspenders sometimes and in light of the history
5 we thought it would make sense to put it in the settlement agreement so
6 all the parties understood what the responsibilities were.”

7
8 In light of Newport’s request in Docket 3818 to extend the deposits to the Repay-
9 ment to the City account for three more years to cover some of the losses prior to
10 June 30, 2005 and in light of the current request in this docket, it should be clear
11 why this “belts and suspenders” provision was included in the settlement that all
12 parties agreed to. Perhaps a stronger belt and wider suspenders were needed now
13 that Newport has once again asked for these funds to be repaid.

14
15 **Q: Does Newport still have amounts that are owed to the City?**

16 A: This is hard to say. If, as we maintain, the outstanding payables are all amounts
17 that go back prior to June 30, 2005, then they do not. Newport’s most recent
18 monthly report for February 2009 shows payrolls owed to the City of \$257,727.75
19 and overhead charges owed to the City of \$93,886.25. Those payables that total
20 \$351,614 should be wiped off the books according to the Commission’s Report and
21 Order and the Settlement that the City of Newport agreed to in Docket 3578. In ad-
22 dition the City owes a credit to the Water Fund of \$357,807 (the difference between
23 the \$709,421 payable on June 30, 2009 and the current payables above of
24 \$351,614). This could be used to pay the outstanding bills to vendors and finally
25 leave the Water Division in a slightly stronger cash position.

26
27 On the other hand, if these are new loans¹² Newport would be in violation of an-
28 other Commission Order. Again looking at the settlement agreement and transcript
29 from Docket 3578, if Newport took loans after June 30, 2005 they were to be “re-

1 flected by appropriate documentation and Newport Water shall have the duty to
2 monitor and track its costs and properly account for how the loan proceeds are ap-
3 plied.” I have not seen any loan documents and do not believe they are a part of
4 this docket or any prior docket. The Commission required that Navy and Ports-
5 mouth be notified if such a loan was to be made, but Portsmouth has never re-
6 ceived any such documentation. In the absence of this rather clear requirement for
7 documentation and notification that has not been met by Newport, I am not sure
8 how any repayment to the City could be approved by the Commission.
9

10 **Q: What is your recommendation regarding repayments to the City?**

11 A: I do not believe the Commission should allow payments beyond those already ap-
12 proved. As agreed to in the settlement to Docket 3578, none of the amounts owed
13 through June 30, 2005 should be allowed to be repaid. The amount owed as of
14 June 30, 2005 should be removed from the Water Division’s payables to the City as
15 they agreed to.
16

17 **Q: Isn’t a municipal water department allowed to repay the City for loans?**

18 A: I think this very issue was addressed in the Commission’s Report and Order in
19 Docket 3832 (Providence Water) relating to the repayment of retiree benefits. In
20 that Docket, Providence Water asked to reimburse the City for past expenses. The
21 Commission rejected Providence Water’s request. The Commission noted that the
22 prohibition against retroactive ratemaking “protects the public by ensuring that pre-
23 sent consumers will not be required to pay for past deficits of the company in their
24 future payments.” The Commission did note that there are exceptions, including
25 R.I. Gen. Laws § 39-3-11.1(a) regarding municipal utilities repaying a loan or ad-
26 vance to the host city. The statute requires reimbursement for loans and advances.
27

¹² Calling it an “account payable” or some other name does not change what it is.

1 **Q: Weren't the pre- June 2005 expenses a loan or advance?**

2 A: Newport has repeatedly claimed that this was not a loan or advance, insisting that it
3 is only an "account payable". The Commission in its Report and Order in Docket
4 3578 made it quite clear that any loans or advances for amounts due after June 30,
5 2005 must have appropriate documentation. Such documentation has been re-
6 quested from Newport in previous dockets; Newport claims none exist because
7 there are no loans or advances.

8

9 I urge the Commission to review the transcript in Docket 3818, pages 137 – 172
10 and 245 – 252, attached as Exhibit A.

11

12 In light of the Commission's past orders on this subject and Newport's clear agree-
13 ment to NOT collect any funds borrowed from the City prior to June 30, 2005, the
14 amounts that Newport Water borrowed from the City prior to June 30, 2005 should
15 be wiped off Newport Water's books and the Commission should clearly order that
16 these amounts not be repaid or retroactively collected in rates.

17

18 **Operating Revenue**

19 **Q: Newport has requested a 3% operating revenue allowance on its operations
20 and maintenance expenses. Do you agree with this?**

21 A: The Commission is well aware of my advocacy for an operating revenue allowance
22 that will provide additional revenues to municipal water utilities impacted in recent
23 years by declining sales. I believe the arrangement the Commission provided for
24 the Kent County Water Authority in Docket 3942 was fair and reasonable. That
25 provided a 3% allowance on total rate revenue requirements, not just operating ex-
26 penses. As I have testified in the past, I believe this allowance is related to reve-
27 nues and not particular expenses or categories of expenses. As in the Kent County
28 decision, 1.5% should be unrestricted and 1.5% should have the same restrictions
29 as those imposed on Kent County.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

In this case Newport Water has asked for an allowance of 3% of its operating expenses. I support this request. However, as I indicated in earlier testimony, I believe the City of Newport owes the Water Division a credit for amounts that have been paid to the City for pre-June 30, 2005 loans or payables. As of the last report from the City (February 2009), this credit would be \$357,807. That credit should be used to fund the Operating Revenue Allowance.

Based on the amounts I have shown for the total revenue requirements, the credit owed from the City to the Water Division exceeds the requested Operating Revenue Allowance. I have thus shown no requirement for this allowance on my attached exhibits. The City of Newport owes its Water Division some \$350,000 based on the agreement in Docket 3578; this should be used to fund the operating revenue allowance.

If, at the time of the Commission's decision in this case, the credit for pre-June 30, 2005 loans exceeds the 3% allowance that Newport requested, I recommend that the full amount still be placed in the Operating Revenue Allowance with any excesses over the 1.5% normal allowance restricted as in Docket 3942.

Revenue Requirements

Q: Have you reviewed Newport's claimed rate year operating expenses?

A: Yes I have. There are several areas where I believe that the claimed expenses may exceed Newport's rate year requirements. Based on the data requests that have been put forth by the Division, I am confident that Mr. Catlin will identify several areas where adjustments are warranted. These include salary and related costs, energy or gasoline, chemicals, consultant fees, and the cost of the Water Quality and Infrastructure Replacement Plans.

1 As the Commission is aware, the Portsmouth Water & Fire District has been quite
2 active in recent rate filings by Newport Water. In an attempt to help control these
3 costs, I have suggested to the District that we rely on the Division to explore ad-
4 justments to many of the claimed operating expenses. If necessary, we will com-
5 ment on these during the rebuttal phase.
6

7 **Q: Are there any areas of operating expenses you would like to address at this**
8 **time?**

9 A: Yes there are two relatively minor items. The first item came to light as a result of
10 PWFD 3-2. While it is relatively minor, it may be symptomatic of others.
11

12 In RFC Sch. B-1 under Regulatory Assessments is an item for RIWWA Assess-
13 ments; this is the annual assessment from the Rhode Island Water Works Associa-
14 tion. As shown on RFC Sch. B-1, this item jumped from \$630 in the last docket to
15 twice this amount (\$1,260) in the test year. Newport Water has proposed a rate
16 year allowance of \$1,260. From the response to PWFD 3-2 it is evident that New-
17 port Water did not pay a 2007 assessment of \$630 and was charged for both 2007
18 and 2008 in the 2008 bill. This doubled the normal amount in the test year, but
19 Newport did not make a normalizing adjustment for this item. A review of RFC Sch.
20 B-1 through B-9 shows numerous other normalizing adjustments of this amount or
21 less, most often as increases. In this case, the rate year regulatory assessment
22 should be reduced by \$630.
23

24 **Q: What is the second item?**

25 A: I suspect this will be addressed by the Division, but the costs claimed by Newport
26 for the Fire Protection category jumped out of this filing. While the costs are rela-
27 tively minor, I am concerned that they represent a possible pattern of over inflating
28 estimates for the rate year.
29

1 Looking at Div 1-1 the Commission will see that the costs for Fire Protection have
2 been:

3	FY 2005:	\$ 1,253
4	FY 2006:	\$ 9,029
5	FY 2007:	\$ 3,605
6	FY 2008:	\$ 11,310
7	Rate Year:	\$21,000

8 The jump in the rate year expenses for this item is far out of line with past expendi-
9 tures. Ms. Forgue explains this increase as related to the purchase of 5 new hy-
10 drants, but this was a past expense (presumably reflected in the big jump in FY
11 2008) and not a rate year expense.

12
13 As shown on my schedules, I recommend that the Commission provide \$6,300 for
14 this expense; an amount equal to the average of the past four years of record.

15
16 **Q: Do you have any other concerns about Newport's proposed rate year operat-**
17 **ing costs?**

18 A: One concern I do want to bring to the Commission's attention is the failure to iden-
19 tify pumping costs as separate operating expense categories. While this has no
20 bearing on the instant docket, it will have a significant bearing on the cost allocation
21 study. As the Commission may recall, this is a concern that I raised in a prior dock-
22 et (Docket 3578) and is a critical element for properly allocating costs. Newport's
23 pumping facilities include both supply pumping (applicable to PWFD) and transmis-
24 sion/distribution pumping (that is not applicable to PWFD). In order to properly al-
25 locate these pumping costs between supply and transmission/distribution it is es-
26 sential to keep the pumping costs separate from treatment costs. Although Docket
27 3578 was settled, I understood that Newport would continue to monitor and account
28 for pumping costs outside of treatment expenses for the purpose of the cost alloca-
29 tion study that is due later. In Newport's next rate filing (Docket 3675) they did
30 identify these pumping costs separately from treatment. However, in Newport's
31 subsequent filing (Docket 3818) and in this filing there were no cost allocation is-
32 sues and the breakout of pumping costs stopped.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

I believe that all parties expect that Newport will file its cost allocation study in its next filing with the Commission. To properly reflect costs so they can be allocated to the right customers, it is critical that Newport identify its pumping costs separately from the treatment expenses as it has done up to last year's rate filing.

This matter will also be critical in future rate cases if Newport Water contracts out the operation of its treatment facilities. Unless specifically directed by the Commission, I suspect that Newport will not require the operator to keep a separate accounting of pumping vs. treatment costs.

Q: Are you asking for anything to be done in this docket regarding the identification of pumping costs?

A: I ask that Newport indicate if it is indeed tracking these costs separately and if these costs can be identified for past years. If Newport has not tracked these costs, I recommend that the Commission require Newport to once again start keeping the pumping costs separate from treatment, in the hopes for a fair and reasonable cost allocation study. I also ask that the Commission order Newport to require that any private operations contract include a provision that pumping costs be separated from treatment costs.

Q: Are there any capital cost items that you would like to address at this time?

A: There are several areas that I'd like to touch on.

The first relates to the capital improvements. Newport has put forth a capital improvement program on Mr. Smith's RFC Schedule 4. This includes both debt financed and revenue financed capital improvements. The revenue financed improvements are an element of the revenue requirements. RFC schedule 4 shows revenue financed needs of:

- o FY 2010: \$1,652,019

- 1 o FY 2011: \$1,502,817
- 2 o FY 2012: \$1,167,610
- 3 o FY 2013: \$ 516,634

4 Newport has asked for a revenue allowance of the FY 2010 amount of \$1,652,019
5 – the rate year CIP. I am not too concerned about the large drop in FY 2013, but
6 the drop of \$150,000 in FY 2011 is of some concern, particularly in light of the fol-
7 lowing.

8
9 In response to PWFD 3-9, Ms. Forgue has indicated that the mixing system for the
10 4 million gallon tank at Lawton Valley will be deleted from the revenue funded CIP.
11 In her prefiled testimony (page 4, line 6) Ms. Forgue indicates that the mixing im-
12 provements projects will cost \$600,000. The \$600,000 is shown on RFC Sch. 4 in
13 FY 2010, but there is an additional \$260,000 shown the following year as well.

14
15 On my schedule 5, I have restated Newport revenue funded CIP and deleted the
16 requirements for the mixing system. The average funding requirement for the next
17 three years is \$1,154,000. I recommend that this amount be provided by the
18 Commission in light of Ms. Forgue's response to PWFD 3-9.

19
20 I have also looked at the impact this will have on the fund balance. Newport will
21 have nearly \$350,000 in its capital spending account (RFC 11) at the start of the
22 rate year. As shown on my schedule 5, Newport will have approximately the same
23 balance at the end of FY 2012 under the adjusted spending plan.

24
25 **Q: What other capital items would you like to address?**

26 A: Newport has requested funding for a proposed \$6.35 million SRF loan. RFC Sche-
27 dule 5 presented a rate year debt payment of \$400,733 that was included as part of
28 the rate year revenue requirement.

29
30 In response to Div 1-33 Newport has modified this showing a FY 2010 (rate year)
31 debt payment of \$131,938.89. Because Newport must accumulate funds each

1 month to make the scheduled bond payments, they will have monthly expenses in
2 the rate year related to the FY 2011 payment on these bonds as well. In FY 2011
3 the debt is estimated to be \$524,300.

4
5 I understand that Newport water is likely to be before the Commission with another
6 case related to the Commission ordered cost of service study within the next 10 -12
7 months. Because that case may not be resolved until after the start of FY 2011
8 and because the funds for debt service are restricted, I am proposing that the
9 Commission provide an allowance on these bonds equal to the average payments
10 in FY 2010 and 2011. As shown on my attached schedules, this still results in a
11 slight reduction to the claimed debt service of about \$150,000.

12
13 Likewise, Newport Water has indicated a revision or update to the proposed FY
14 2010 Bonds (\$7.1 million and \$3.6 million). I have made a similar adjustment to
15 these bonds as a result of Newport's response to Division 1-35 and Division 2-11.
16 This too is shown on my attached schedules.

17
18 **Q: Instead of providing a two year average for the debt, why haven't you pro-**
19 **posed using the restricted debt service fund balances as you have proposed**
20 **with the revenue funded capital improvements?**

21 **A:** I looked at this; however, considering that restricted debt balance is projected to
22 drop in 2011 and go negative in 2012, I believe that Newport will need those funds
23 in the coming years. Further, it may hurt the City's bond rating if they do not show
24 adequate future funds to support their bond issues. As presented on RFC 11, the
25 annual debt service costs are projected to increase each year, unlike the revenue
26 financed capital that is projected to decrease.

1 **Q: Have you also looked at Newport's claim regarding miscellaneous revenues**
2 **or revenue offsets?**

3 A: Yes. There are some minor adjustments I recommend, primarily related to the me-
4 tering costs and the allocations to WPC and sewer billing.

5

6 First, the amounts derived on RFC Sch 6 for the share of the rate year debt related
7 to the radio read program was incorrectly calculated. I believe Mr. Smith is aware
8 of this and will correct it in his rebuttal schedules.

9

10 The second adjustment has to do with the rate funded revenue requirements for
11 meter replacements (RFC Sch 4). There was no provision for reimbursement of
12 these costs for sewer billing. I have included these on my schedules.

13

14 In total, the adjustments I have recommended increase the miscellaneous revenues
15 by some \$36,000, effectively reducing the rate revenue requirements by this
16 amount.

17

18 **Q: Have you prepared an exhibit that summarizes the adjustments to the revenue**
19 **requirements you discussed?**

20 A: Yes I have. It is attached to my testimony and includes a summary as well as de-
21 tails regarding my recommendations regarding capital spending, debt service, fire
22 protection, miscellaneous revenues, and the allocation of City Services expenses.

23

24 **Q: Does this conclude your testimony?**

25 A: At the time this testimony was due, there were several data requests pending. As I
26 noted we are relying on the Division's expert to fully analyze the claimed revenue
27 requirements. Depending on the responses to those data requests and the Divi-
28 sion's testimony, I expect additional surrebuttal testimony.

Summary of Revenue Requirements

	<u>NWD Claimed</u>		<u>PWFD</u>	<u>PWFD</u>	
	<u>Rate Year</u>	<u>Adjustments</u>	<u>Proposed</u>		<u>Notes</u>
<u>Operating Revenue Requirements</u>					
Administration	\$ 2,527,400	\$ (415,011)	\$ 2,112,389		(1,7))
Customer Service	\$ 724,850		\$ 724,850		
Source of Supply - Island	\$ 633,700		\$ 633,700		
Source of Supply - Mainland	\$ 146,500		\$ 146,500		
Treatment - Station One	\$ 1,712,800		\$ 1,712,800		
Treatment - Lawton Valley	\$ 1,650,150		\$ 1,650,150		
Water Laboratory	\$ 249,450		\$ 249,450		
Transmission & Distribution Maintenance	\$ 1,100,900		\$ 1,100,900		
Fire Protection	\$ 21,000	\$ (14,700)	\$ 6,300		(6)
Total Operating Requirements	\$ 8,766,750	\$ (429,711)	\$ 8,337,040		
<u>Capital Revenue Requirements</u>					
Contribution to Debt Service Account	\$ 2,072,985	\$ (62,161)	\$ 2,010,823		(2)
Contribution to Repayment to City Account	\$ -		\$ -		
Contribution to Capital Spending Account	\$ 1,652,019	\$ (498,019)	\$ 1,154,000		(5)
Total Capital Requirements	\$ 3,725,004	\$ (560,180)	\$ 3,164,823		
Subtotal Revenue Requirements	\$ 12,491,754	\$ (989,891)	\$ 11,501,863		
Additional Rev Requirements (Operating Revenue)	\$ 263,003	\$ (263,003)	\$ -		(4)
Revenue Requirements before Offsets	\$ 12,754,756	\$ (1,252,893)	\$ 11,501,863		
Less: Revenue Offsets	\$ (708,065)	\$ (36,119)	\$ (744,184)		(3)
Net Revenue Requirements	\$ 12,046,691	\$ (1,289,013)	\$ 10,757,679		
Revenue From Current Rates (RFC Sch. 10)	\$ 9,356,296		\$ 9,356,296		
Increase Needed	\$ 2,690,396		\$ 1,401,383		
% Increase	28.8%		15.0%		

(1) City Services adjustments -- see CW Sch 3

(2) Debt Service Adjustment -- see CW Sch 2

(3) Adjustment to rate funded capital -- see CW Sch 4

(4) See Testimony of C. Woodcock. Deposit to be derived from Credit on pre-June 30, 2005 amounts paid to City.

(5) See CW Sch 5

(6) See CW Sch 6

(7) See testimony

Debt Service Adjustments

2009 SRF Bonds - \$6.35 Million

	<u>Rate</u>	<u>Year Amt</u>	<u>FY 2011</u>	<u>Average</u>
NWD Initial Filing (Sch 5)	\$	400,733	\$ 555,697	
NWD Div 2-11	\$	137,531	\$ 524,300	
Difference	\$	(263,202)	\$ (31,397)	\$ (147,300)

2010 SRF Bonds \$7.1 million

NWD Initial Filing (Sch 5)	\$	210,536	\$ 271,602	
NWD Div 2-11	\$	260,855	\$ 322,791	
Difference	\$	50,319	\$ 51,189	\$ 50,754

2010 SRF B Bonds \$3.6 million

NWD Initial Filing (Sch 5)	\$	181,500	\$ 193,155	
NWD Div 2-11	\$	214,500	\$ 228,924	
Difference	\$	33,000	\$ 35,769	\$ 34,385

Totals \$ (62,161)

See Testimony

Determination of Budget Percentages

	NWD FY2009		PWFD Revised	
	Adopted Budget	Percentage	FY2009 Budget	Percentage
Total General Fund Budget (Adopted)	76,683,576		76,683,576	
Add: Equipment Operations Fund	1,449,071		1,449,071	
Less:				
School Appropriation	(23,142,725)		-	
Library Appropriation	(1,655,167)		-	
Civic Support Requests	(183,900)		-	
Transfers to Capital Funds				
Total General Fund Budget For Allocation	53,150,855	59.44%	78,132,647	73.74%
Water Fund	19,943,420	22.30%	11,501,863	10.85%
WPC Fund	12,628,836	14.12%	12,628,836	11.92%
Maritime Fund	1,483,000	1.66%	1,483,000	1.40%
Beach Fund	866,324	0.97%	866,324	0.82%
Parking Fund	1,347,952	1.51%	1,347,952	1.27%
Combined Budgets	89,420,387	100.00%	105,960,622	100.00%

Allocation of Legal and Administrative Costs to Enterprise Funds

Allocated Item	Cost To Be Allocated	Water %	Water Fund
Audit Fees	\$ 84,875	6.18%	5,245
OPEB Contribution (1)	\$ 3,500,000	0.00%	-
City Council	\$ 16,000	5.00%	800
Citizen Survey	\$ 16,000	5.00%	800
City Clerk	\$ 275,000	1.00%	2,750
City Manager	\$ 133,250	10.85%	14,464
Human Resources	\$ 303,388	9.08%	27,548
City Solicitor (50%)	\$ 144,589	10.85%	15,695
Finance Admin (half of 80%)	\$ 193,981	10.85%	21,056
Finance Admin 10%	\$ 38,796	16.20%	6,285
Purchasing	\$ 90,123	18.60%	16,763
Assessment	\$ 113,456	3.17%	3,600
Collections	\$ 313,663	16.17%	50,721
Accounting - 5%	\$ 9,749	100.00%	9,749
Accounting	\$ 373,951	5.43%	20,296
Public Safety	\$ 28,531,884	0.00%	-
Facilities Maintenance	\$ 823,521	4.00%	32,941

Legal & Administrative	228,714
rounded	\$ 228,710
NWD Proposed	\$ 539,455
Difference	(310,741)

Allocation of Data Processing Costs to Enterprise Funds

Allocated Item	Cost To Be Allocated	Water %	Water Fund
MIS - Communications Cost	\$ 328,960	7.90%	25,988
MIS - Other Costs	\$ 886,172	10.85%	96,193

Data Processing (1)	122,180
rounded	\$ 122,000
NWD Proposed	\$ 225,820
Difference	(103,639)

Adjustments to Miscellaneous Revenues

	<u>NWD Rate</u>	<u>PWFD</u>	
	<u>Year Claim</u>	<u>Adjusted RY</u>	
Sundry charges	\$ 140,016	\$ 140,016	
WPC cost share on customer service	\$ 248,294	\$ 272,380	see below
Middletown cost share on customer service	\$ 124,053	\$ 136,087	see below
Rental of Property	\$ 81,000	\$ 81,000	
Water Penalty	\$ 42,320	\$ 42,320	
Miscellaneous	\$ 7,515	\$ 7,515	
Investment Interest Income	\$ 39,191	\$ 39,191	
Water Quality Protection Fees	<u>\$ 25,676</u>	<u>\$ 25,676</u>	
Total Offsets to Revenue Requirements	\$ 708,065	\$ 744,184	
Difference		\$ 36,119	

Determination of Charges to Water Pollution Control and Middletown Sewer

			FY 2010
Customer Service Expenses			
O&M			\$ 724,850
Rate Funded Meters			\$ 64,247
Debt Service on Loan for Radio Read			<u>\$ 61,894</u>
Subtotal			\$ 850,991
Customer Service expenses 50%			\$ 425,496
Charge to WPC	9,245	64%	\$ 272,380
Charge to Middletown Sewer	4,619	32%	\$ 136,087
Water Customers	14,442		

Revenue Funded Capital Improvements

<u>Adjustment to Revenue Funded CIP</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
NWD Proposed Capital Improvements (RFC 4)	\$ 1,652,019	\$ 1,501,817	\$ 1,167,610
Less LV 4 Mgal resrv Aeration- Design & Constr	\$ (600,000)	\$ (260,000)	\$ -
Adjusted Revenue Funded CIP	\$ 1,052,019	\$ 1,241,817	\$ 1,167,610

Proposed Funding from Rates \$ 1,154,000

Capital Fund Cash Flow Estimate

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Capital Spending Fund Begin. Balance (RFC 11)	\$ 348,660	\$ 450,641	\$ 362,824
PWFD Proposed Revenue from Rates	\$ 1,154,000	\$ 1,154,000	\$ 1,154,000
Adjusted Revenue Funded CIP	\$ 1,052,019	\$ 1,241,817	\$ 1,167,610
Capital Spending Fund Ending Balance	\$ 450,641	\$ 362,824	\$ 349,214

Newport Proposed Allowance = \$ 1,652,019
PWFD Proposed Allowance = \$ 1,154,000
Difference \$ (498,019)

CW Sch 6

Fire Protection Operating Costs

<u>FY</u>		
2005	\$	1,253
2006	\$	9,029
2007	\$	3,605
2008	\$	11,310
Avg (rounded)	\$	6,300
NWD Claim	\$	21,000
Difference	\$	(14,700)

EXHIBIT

A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

HEARING IN RE:

CITY OF NEWPORT WATER DIVISION
APPLICATION TO CHANGE RATE SCHEDULES

DOCKET NO. 3818

-----/

JULY 24, 2007
9:30 A.M.

89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND

BEFORE THE COMMISSION:

ELIA GERMANI, CHAIRMAN
ROBERT B. HOLBROOK, COMMISSIONER
MARY E. BRAY, COMMISSIONER

ALAN NAULT, FINANCIAL ANALYST
PATRICIA LUCARELLI, LEGAL COUNSEL

 **COPY**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

APPEARANCES:

**FOR THE CITY OF
NEWPORT:**

KEOUGH & SWEENEY
BY: JOSEPH KEOUGH, JR., ESQ.

FOR THE DIVISION:

LEO WOLD, SPECIAL
ASSISTANT ATTORNEY GENERAL

**FOR THE TOWN OF
PORTSMOUTH:**

HINCKLEY ALLEN SNYDER
BY: GERALD PETROS, ESQ.
AND
BRENT R. CANNING, ESQ.

**FOR THE DEPARTMENT
OF THE NAVY:**

AUDREY VAN DYKE, ESQ.

1 happy to have a discussion with Mr. Keough about
 2 this issue. I think it's an important issue that
 3 I confess probably none of us have thought about
 4 before the hearing and probably should have. I'm
 5 just trying to find out what the parameters of
 6 exploring it going forward might be so that it
 7 doesn't just get dropped and left unattended. So
 8 I'm happy to follow whatever process Newport is
 9 comfortable with in following that out and seeing
 10 where it leads. I'd be happy to talk to Mr.
 11 Keough at a break.

12 COMMISSIONER BRAY: Perhaps then we can
 13 do that at a later date because I think Miss
 14 Forgue has not had any indication that any of
 15 this was going to come up, so I would sustain
 16 your objection.

17 MR. KEOUGH: Thank you.

18 MR. PETROS: Very well.

19 COMMISSIONER BRAY: Any further
 20 questions, Mr. Petros?

21 MR. PETROS: Oh, yes.

22 Q. Miss Forgue, let's turn to a different topic.
 23 Let's talk about the indebtedness to the City of
 24 Newport --

A-1 COURT REPORTERS, INC.
 (401) 405-0410

1 there?

2 A. Correct.

3 Q. That hasn't changed?

4 A. But it comes from the water -- well, it's
 5 supposed to come from the water fund.

6 Q. That was my next question. And the water fund or
 7 the water department is required to reimburse the
 8 city for that expense.

9 A. Correct.

10 Q. And when you say the water fund, what are you
 11 referring to?

12 A. The water department.

13 Q. Okay. I don't even know. Is the water fund a
 14 special account that's just for the water
 15 department?

16 A. Yes. It's where all of our revenues and
 17 expenses come out of.

18 Q. Okay. So the city cuts the check to the -- all
 19 the city employees, including the water
 20 department employees, and the water department is
 21 required to reimburse the city for those payroll
 22 expenses.

23 A. Yes.

24 Q. And I think, as you said a moment ago, that's not

A-1 COURT REPORTERS, INC.
 (401) 405-0410

1 A. Yes.

2 Q. -- of the water department. As I think you point
 3 out in your prefiled testimony, the employees of
 4 the water department are municipal employees.

5 A. Correct.

6 Q. They work for the city.

7 A. Yes.

8 Q. And so I guess for that reason you say that the
 9 City of Newport pays those employees directly.

10 A. No. I guess what I was just trying to
 11 indicate is that the city has a responsibility
 12 for employees to be paid under the umbrella of
 13 the City of Newport.

14 Q. Then I misread your testimony. My apologies. So
 15 does the check come from the water department or
 16 from some other city source?

17 A. All our -- all the payroll checks come from
 18 the city for the entire city.

19 Q. That's what I meant. I thought so. So the city
 20 writes the check to all of the employees who work
 21 in the water department?

22 A. Correct.

23 Q. Okay. And they've done that, that's been
 24 standard operating practice since you've been

A-1 COURT REPORTERS, INC.
 (401) 405-0410

1 an optional reimbursement. The water department
 2 is required to reimburse the city.

3 A. Correct.

4 Q. Now, in sort of a general business sense, when
 5 you're running a business and that business is
 6 unable to meet payroll, that's a sign of some
 7 concern about the financial status of the
 8 business. Would you agree with that general
 9 proposition?

10 A. Yes.

11 Q. And you've been concerned about the situation in
 12 Newport I think, as you said in your testimony,
 13 about its inability to meet -- Newport Water's
 14 inability to meet all of its payroll needs.

15 A. Yes.

16 Q. Now, is it fair to say that since fiscal year
 17 2005, maybe earlier but I'll start with fiscal
 18 year 2005, Newport Water department has been
 19 unable to meet payroll expenses?

20 A. I believe it was fiscal year '04 -- or '05.

21 Q. I'm not even going to ask about '04. That's
 22 okay.

23 A. Well, '05 starts in '04.

24 Q. Right. Fiscal year '05 begins on July 1, 2004,

A-1 COURT REPORTERS, INC.
 (401) 405-0410

- 1 right?
- 2 A. (Nodded affirmatively).
- 3 Q. And ends on June 30, 2005.
- 4 A. Yes.
- 5 Q. For fiscal year '05 is it accurate to say that
- 6 the city -- excuse me -- Newport Water was not
- 7 able to meet all of its payroll demands?
- 8 A. At what point? Entire fiscal year '05? Are
- 9 you saying at what -- I don't know at which
- 10 point. You know, I can't say. I don't have
- 11 anything in front of me to say at what point
- 12 exactly is when the problem started.
- 13 Q. Well, let's -- let me try and simplify it for
- 14 you. At the end of fiscal year '05 --
- 15 A. Uh-huh.
- 16 Q. -- Newport Water --
- 17 A. Uh-huh.
- 18 Q. -- did not have -- did not have money to pay all
- 19 of the payroll demands it incurred, expenses it
- 20 incurred in fiscal year 2005.
- 21 A. I believe we did owe the city payroll.
- 22 Q. In fact, you owed the city payroll, you owed
- 23 \$356,081 at the end of fiscal year '05.
- 24 A. I don't know the exact number, but I'll --

A-1 COURT REPORTERS, INC.

(401) 405-0410

- 1 A. Yep. Payroll.
- 2 Q. That actually tells us what the payroll deficit
- 3 was in the water department for fiscal year '05,
- 4 doesn't it?
- 5 A. Yes.
- 6 Q. And that number is as I mentioned \$356,081.
- 7 A. Yes.
- 8 Q. Okay. Will you accept subject to check that the
- 9 same report in 2006 --
- 10 A. Uh-huh.
- 11 Q. -- indicates a -- the payroll deficit now has
- 12 risen to 938,063? Does that sound right to you?
- 13 A. (Nodded affirmatively).
- 14 Q. And I just had a chance to look at -- Newport
- 15 files quarterly reports now, right?
- 16 A. Yes.
- 17 Q. And do those get filed with the Commission as
- 18 well?
- 19 A. Yes.
- 20 Q. And I looked at the quarterly report that just
- 21 came out.
- 22 A. That was a monthly report. I think that was
- 23 the monthly cash flow for June 30th because we
- 24 haven't done the quarterly report yet.

A-1 COURT REPORTERS, INC.

(401) 405-0410

- 1 okay.
- 2 MR. PETROS: Well, let me show you
- 3 that. May I approach just briefly?
- 4 THE CHAIRMAN: Sure.
- 5 MR. PETROS: I have copies of these
- 6 exhibits but I'm only going to be asking about
- 7 one number and I think we'll all be in agreement
- 8 about it, I'd be happy to put them in as full
- 9 exhibits if the Commission wants, but we might be
- 10 able to save some space if we do it this way.
- 11 Just for the record, this is the actual annual
- 12 report to the Public Utilities Commission by the
- 13 City of Newport Water Department for year ending
- 14 6/30/05, fiscal year '05.
- 15 Q. If I may, Miss Forgue --
- 16 A. Yep.
- 17 Q. -- just showing you what I described a moment
- 18 ago, that was received here in the Public
- 19 Utilities Commission.
- 20 A. Okay.
- 21 Q. If you turn to Page 28 --
- 22 A. Yes.
- 23 Q. -- that actually lists -- if you can just take
- 24 that for a moment.

A-1 COURT REPORTERS, INC.

(401) 405-0410

- 1 Q. The monthly report for June 30th, that's showing
- 2 a payroll deficit for Newport Water as of
- 3 June 30th --
- 4 A. Uh-huh.
- 5 Q. -- this year of \$1,259,496.49. Would you accept
- 6 that subject to check?
- 7 A. Yes. Uh-huh.
- 8 COMMISSIONER HOLBROOK: Is that number
- 9 just payroll? Nothing else?
- 10 MR. PETROS: That's just payroll.
- 11 There is another element to it I'll address in
- 12 just a few minutes.
- 13 Q. So for the last three years starting in fiscal
- 14 year '05 the payroll deficit within Newport Water
- 15 has risen from \$350,000 to \$938,000 to \$1,259,000
- 16 approximately.
- 17 A. Yes.
- 18 Q. Now, you talked about the Solicitor's office a
- 19 moment ago in response to one of Mr. Keough's
- 20 questions. If Newport Water owed that kind of
- 21 money to an outside vendor, to a third party as
- 22 opposed to the city, would you expect that that
- 23 outside vendor would bring some legal action to
- 24 recover those amounts?

A-1 COURT REPORTERS, INC.

(401) 405-0410

- 1 A. Yes.
- 2 Q. But the city -- the city has not forced you to
3 make those payments for the reasons you've
4 described. You're a department to some extent
5 within the city, right?
- 6 A. Well, money is transferred on an ongoing
7 basis from -- when there is an available balance
8 in our checking account taking into account what
9 we have to transfer to the restricted account,
10 the City Controller as the money becomes
11 available takes it out of our -- every payroll
12 that hasn't been paid is tracked and the City
13 Controller removes those funds and transfers it
14 from the water fund to the general fund as the
15 funds are available.
- 16 Q. So just to summarize where we are today, Newport
17 Water owes the city more than \$1,000,000 for
18 payroll.
- 19 THE WITNESS: As of today?
- 20 MR. PETROS: As of today.
- 21 A. That was as of June 30th. I know some
22 payrolls have been paid because that's a point in
23 time.
- 24 Q. As of June 30th this year.

A-1 COURT REPORTERS, INC.
(401) 405-0410

- 1 Q. We can use electricity as an example. I know we
2 talked about National Grid earlier. For example,
3 if Newport Water owed National Grid \$1.2 million,
4 you'd expect National Grid would take some action
5 to collect that amount, right?
- 6 A. Right, but electricity is in a restricted
7 account.
- 8 Q. That's a bad example, then. I want to talk about
9 the previous docket and amounts owed by Newport
10 Water to the city prior to June 30th of 2005.
11 Okay? I'm going to just shift a little bit to
12 that and then we'll come back to the general debt
13 issues.
- 14 MR. KEOUGH: Which prior docket?
- 15 MR. PETROS: I think it was the most
16 immediate prior docket, Joe.
- 17 Q. The parties agreed I think in the last docket to
18 a settlement and the Commission approved it with
19 changes in which they agreed that Newport Water
20 could repay \$2.5 million advanced by the city,
21 didn't they? That was two dockets ago.
- 22 MR. KEOUGH: Yes.
- 23 A. Yes.
- 24 Q. I apologize. Two dockets ago.

A-1 COURT REPORTERS, INC.
(401) 405-0410

- 1 A. Yes.
- 2 Q. The city expects repayment of that amount.
- 3 A. Yes.
- 4 Q. The amount is overdue.
- 5 A. Yes.
- 6 Q. And the city has not taken any legal action to
7 collect those amounts.
- 8 A. No, they haven't.
- 9 THE CHAIRMAN: Can they? Can the city
10 sue itself?
- 11 MR. PETROS: That's a good question.
- 12 Mr. Chairman. I don't know --
- 13 MR. KEOUGH: I can answer that.
- 14 MR. PETROS: -- if the city can sue
15 itself. I tend to doubt it.
- 16 MR. KEOUGH: They cannot.
- 17 MR. PETROS: I'm quite confident they
18 would not.
- 19 Q. Now, is it fair to say that if Newport Water had
20 decided to reimburse the city for those payroll
21 obligations on a current basis, Newport Water
22 would not have had enough money to pay other
23 vendors?
- 24 A. Correct.

A-1 COURT REPORTERS, INC.
(401) 405-0410

- 1 A. Yes.
- 2 Q. And I think the agreement roughly was \$500,000 a
3 year would be repaid by Newport Water to the
4 city.
- 5 A. Yes.
- 6 Q. And that's still ongoing today.
- 7 A. Correct.
- 8 Q. And as part of that agreement that again was
9 presented to and approved by the Commission,
10 Newport Water also agreed that it would not seek
11 to recover in rates any additional monies that it
12 may borrow from the City of Newport up through
13 and including June 30, 2005. Let me show -- to
14 be fair, may I just approach with the docket --
15 with the agreement rather? This is the
16 Commission's report and order. I think it's
17 dated June 2nd, 2004.
- 18 Miss Forgue, I believe what we had
19 highlighted is on Page 4 of the order. Just take
20 a moment to review that to make sure that you're
21 comfortable with what I just said was accurate.
- 22 Okay?
- 23 A. Uh-huh.
- 24 Q. Okay. So as part of that agreement Newport Water

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 agrees that it's not going to seek to recover in
 2 rates any additional monies that it may borrow
 3 from the city prior to the cutoff date which is
 4 June 30, 2005.
 5 A. Yes.
 6 Q. Now, has the city advanced monies to Newport
 7 Water, additional monies to Newport Water prior
 8 to June 30, 2005?
 9 A. No.
 10 Q. Okay. Well, let's talk about -- let's go back to
 11 the annual report then. I think you still have
 12 it front of you. We already talked about the
 13 fact that at the end of June 30, 2005 there was a
 14 payroll deficit of \$356,081, right?
 15 A. Yes.
 16 Q. Okay. Now, in addition to that, the annual
 17 report also lists an item owed to the city
 18 described as other funds. Do you see that?
 19 A. Yes.
 20 Q. And it lists that item as being valued at -- as
 21 of June 30, 2005 as \$353,340.
 22 A. Yes.
 23 Q. And so the total for those two, if my math is
 24 right, is \$709,421.

A-1 COURT REPORTERS, INC.
 (401) 405-0410

1 Newport Water, in that situation Newport Water
 2 went out to a bank to get bank financing to pay
 3 for its payroll.
 4 MR. KEOUGH: Objection. Hypothetical.
 5 There's no foundation for this question. They
 6 didn't go out to a bank.
 7 THE CHAIRMAN: Overruled. You may
 8 inquire.
 9 MR. PETROS: Do you have the question
 10 or do you want me to repeat it?
 11 THE WITNESS: Could you please repeat
 12 the question?
 13 Q. I'm just going to ask you two or three questions
 14 in this area and I'll move on. Just assume for a
 15 moment that the city says to Newport Water,
 16 "Don't worry about payroll. You can run a
 17 deficit," instead having them say, "We want to be
 18 paid." Assume you have to go out and borrow
 19 money from a bank.
 20 A. Okay.
 21 Q. If you had done that, there's no question you
 22 would be getting a loan from the bank to do that,
 23 correct?
 24 A. Correct.

A-1 COURT REPORTERS, INC.
 (401) 405-0410

1 A. Yep.
 2 Q. Looks about right?
 3 A. Yes. Yes.
 4 Q. Now, can you describe for the Commission and for
 5 me what items are included in the "other funds"
 6 category?
 7 A. I don't know. I don't complete this
 8 document, so I'm not sure what those funds would
 9 be, what the breakdown is of the 353,340.
 10 Q. Without knowing what the breakdown is
 11 specifically, do you know what types -- or what
 12 types of expenses are included in there?
 13 A. No, I do not.
 14 Q. Would they be the same type of obligations to the
 15 city that are listed in your June 30, 2007
 16 monthly report?
 17 A. They could be. I don't know.
 18 Q. I want to talk to you about the nature of these
 19 obligations to the city, the \$709,000 we just
 20 talked about. Okay?
 21 A. Yes.
 22 Q. And ask you a few questions in that regard. I
 23 want you to assume for a moment that instead of
 24 the city not demanding timely payment from

A-1 COURT REPORTERS, INC.
 (401) 405-0410

1 Q. And so in fiscal year 2005 you would have needed
 2 a loan to cover all of your payroll expenses in
 3 the amount of approximately \$356,000. Okay?
 4 A. Yep.
 5 Q. Two more questions. Given the financial
 6 situation you were presented with, Newport was
 7 presented with, Newport Water, in fiscal year
 8 2006 you would have had to increase that loan to
 9 approximately \$900,000 to meet all of our payroll
 10 requirements. Are you with me?
 11 THE WITNESS: If we were at a bank?
 12 MR. PETROS: If you were at a bank.
 13 A. Sure.
 14 Q. For fiscal year 2007 that loan would have had to
 15 have increased to approximately 1,200,000 if you
 16 were at a bank to meet all of your payroll
 17 obligations.
 18 A. Yes.
 19 Q. So what's really happened -- is it fair to say,
 20 Miss Forgue, what's really happened here is that
 21 Newport Water found itself in the situation where
 22 it had a structural deficit, it did not have
 23 enough revenue, enough money to pay for, among
 24 other things, payroll on a current basis.

A-1 COURT REPORTERS, INC.
 (401) 405-0410

- 1 A. Yes. We found an issue with keeping up with
2 all our vendors, the City of Newport being a
3 vendor, or in that category.
- 4 Q. Okay. You had -- I mean, I think you actually
5 talk about a deficit, I think Mr. Smith does,
6 too, in his testimony. You actually had a
7 structural deficit where you could not keep up
8 with your payroll expenses.
- 9 A. Because we were paying other -- we had a
10 deficit because we couldn't pay all our vendors.
- 11 Q. Right. And you might have been able to move that
12 deficit from one area of the business to another,
13 but where it wound up predominantly was in
14 payroll.
- 15 A. Yes.
- 16 Q. And that deficit again grew from fiscal year '05
17 to fiscal year '06 to fiscal year '07.
- 18 A. Yes.
- 19 Q. And at no time during those three years did
20 Newport, given the decision that Newport Water
21 made, did it have available funds to pay off that
22 deficit.
- 23 A. We paid it off. As we were making payments
24 there were other payrolls and other bills coming

A-1 COURT REPORTERS, INC.
(401) 405-0410

- 1 in, so it's been kind of rolling.
- 2 Q. But that deficit hasn't been rolling. That
3 deficit has been growing from '05 to '06 to '07.
- 4 A. But we've been reducing other deficits on our
5 vendor side, so I guess our opinion would be to
6 go further out on some of our other vendors and
7 then the payroll would come down.
- 8 Q. Peace. I'm not quibbling with you on that. You
9 paid other -- you had a lot of obligations. You
10 had more going out than you had coming in.
- 11 A. Correct.
- 12 Q. I don't disagree with you on that. And in effect
13 what Newport Water has done, and I'm not faulting
14 you for this, Miss Fergie, or Newport Water, I
15 don't want it to be contentious, but what Newport
16 Water has done is it's made choices and funded
17 this structural deficit with the help of the city
18 by them giving you time on payroll.
- 19 A. Yes.
- 20 Q. And in a very straight forward way you might look
21 at it as Newport Water has essentially received
22 interest free loans from the city to cover its
23 payroll expenses for three years now.

MR. KEOUGH: Objection.
A-1 COURT REPORTERS, INC.
(401) 405-0410

- 1 THE CHAIRMAN: What's the basis for
2 your objection?
- 3 MR. KEOUGH: No foundation for the
4 question whatsoever.
- 5 THE CHAIRMAN: Well, she can answer it.
6 She's capable of answering that question. You
7 may answer.
- 8 A. The city is not charging us interest.
- 9 Q. Now Miss Fergie, I'm just about done on this
10 topic, but would you agree that if the
11 Commissioners find -- if the Commissioners find
12 that Newport Water had effectively borrowed
13 \$709,000 from the City of Newport as of June 30,
14 2005 and pursuant to the order in the docket two
15 dockets ago, Newport Water would be prohibited
16 from recovering that amount in rates?
- 17 A. I would defer to the Commissioners to make
18 that decision.
- 19 Q. But you would agree that's what the order said
20 from two dockets ago?
- 21 A. That was the language in the agreement, yes.
- 22 Q. And that was language, again, that all the
23 parties arrived at after substantive productive
24 conversations two dockets ago.

A-1 COURT REPORTERS, INC.
(401) 405-0410

- 1 A. Yes. That was the settlement agreement, yes.
- 2 Q. And there was some disagreement back then as to
3 what amount should be repaid to the city.
- 4 A. Yes, as I recall.
- 5 Q. I want to follow-up on a question that I think
6 Mr. Nault asked Mr. Smith earlier and I was going
7 to wait for you to ask this question, but he's
8 already talked to Mr. Smith about it. As of
9 today, as we sit here today, in the testimony
10 that Newport has submitted has Newport presented
11 the Commission with a plan to repay any portion
12 or all of its current obligations to the city?
- 13 A. We did in our original filing.
- 14 Q. Peace. I understand. And the Commission has
15 ruled on that, right?
- 16 A. Uh-huh.
- 17 Q. And I heard Mr. Keough say earlier he's not
18 seeking reconsideration of that. So given that
19 that has now happened, my question is today we're
20 here on the first day of this hearing, we know
21 there's a substantial deficit to the city, nobody
22 disputes that, you presented it accurately, I'm
23 sure, in your testimony. My question is is
24 Newport Water today presenting a plan or has it

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 presented a plan in its testimony as to how it
2 intends to treat that indebtedness to the city?
3 A. Well, we had hoped I believe we were going to
4 -- the additional revenue from the additional
5 billing, to be able to use those funds to offset
6 it, but it's not to erase the entire deficit; it
7 would just be a portion.

8 Q. I heard that from Mr. Smith today as well. Is
9 that plan anywhere in the testimony that you
10 filed?

11 A. I think it was in discussions about -- with
12 the additional -- additional revenue to be able
13 to use it to pay off the deficit. I don't recall
14 specific testimony where it's laid out in black
15 and white.

16 Q. Just to get a clear answer. Is Newport Water's
17 plan as I heard it today to use some of the
18 revenue from the additional billing --

19 A. Uh-huh.

20 Q. -- is it anywhere in the written testimony stated
21 that it's Newport Water's plan to use some or all
22 of that to pay for indebtedness to the city?

23 A. I don't recall.

24 MR. KEOUGH: Can I just say for the
A-1 COURT REPORTERS, INC.
(401) 405-0410

1 the extra billing.

2 MR. KEOUGH: Can I, just so the record
3 is clear, that specific aspect I believe is
4 addressed if not explicitly in our testimony,
5 there is a suggestion by Mr. Woodcock in his
6 testimony and we'll get to that in his
7 examination that that money could possibly be
8 used for that. You know, to put it on the table,
9 this debt is not going away tomorrow. If there's
10 money from those excess billing charges, that can
11 hopefully be used to start paying down that debt.
12 As Miss Fergue has said, that -- those payrolls
13 are addressed on a going forward basis. We're
14 constantly, you know, chipping away at that and
15 we'll go through this I believe in greater detail
16 tomorrow.

17 THE CHAIRMAN: You're not clipping away
18 at it. If it's going up, you're not chipping
19 away at it.

20 MR. KEOUGH: Lately we haven't, you're
21 right. In the last fiscal year we have not, and
22 I think especially when we talk to Mr. Woodcock
23 we're going to see the genesis of that and how
24 that's happened, but that is -- if it's not

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 record --

2 COMMISSIONER HOLBROOK: That money is
3 not really extra money. That money from extra
4 billing is just an acceleration of a cash flow
5 stream that's going to come in today, if not
6 today, then the next month or the next month. So
7 if someone is looking to repay the city the debt,
8 that has to come from an identified source that's
9 not really on the table that I would see right
10 now.

11 MR. PETROS: I agree, Commissioner.
12 There are two aspects to that additional money,
13 one is they're going to be collecting some cash
14 sooner than they would otherwise, and the second
15 part is the increased billing charges and I think
16 the amount Mr. Smith testified to is about
17 \$260,000 a year, somewhere in that range, I agree
18 those are the two amounts, and what I understood
19 Mr. Smith to say was he was going to use some of
20 the latter portion of that to pay the
21 indebtedness and I was asking the witness whether
22 that appears anywhere in this docket.

23 THE WITNESS: That's what I don't
24 recall. It's the additional billing charges from
A-1 COURT REPORTERS, INC.

(401) 405-0410

1 explicitly put forward in the testimony, I think
2 that's what Mr. Smith has testified to. There
3 have been some suggestions by other parties that
4 that's what it would be available for. Again,
5 it's hypothetical at this point.

6 MR. PETROS: I don't want to -- unless
7 the Commission wants to, I don't want to have
8 this break down into legal arguments at this
9 point. I'd like to finish questioning the
10 witness and I'm sure we'll have an opportunity to
11 have an exchange on these points at the
12 appropriate time.

13 THE CHAIRMAN: Go ahead, Mr. Petros.

14 MR. PETROS: May I approach again?

15 THE CHAIRMAN: Go ahead.

16 MR. PETROS: I'm just going to ask,
17 Miss Fergue, the Commissioners have the
18 information accessible and I just talked to Mr.
19 Keough about it and he agreed to it, we'll put on
20 the record the amount of the indebtedness as of
21 the June 30th, 2007 report we spoke about.

22 Q. Miss Fergue, just follow along with me so I get
23 this right. Is it correct that looking at your
24 June 30, 2007 -- what you call a monthly cash

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 report --

2 A. This is the monthly cash flow.

3 Q. Monthly cash flow, you're showing that as of

4 June 30, 2007 the payroll indebtedness to the

5 city is \$1,259,496.49?

6 A. Yes.

7 Q. Okay. And then the second item is described as

8 fiscal year 2006/2007 second and third quarter

9 OH, that's overhead?

10 A. Overhead.

11 Q. Overhead allocation. What is that?

12 A. That's the legal and admin and data

13 processing, those -- the city services.

14 Q. City services. Okay. And so those have not been

15 paid to the city?

16 A. Correct.

17 Q. And that amount is \$237,499.50?

18 A. Yes.

19 Q. Okay. And the next item includes equipment

20 charges January to March to be transferred to the

21 city.

22 A. Yes.

23 Q. What are those expenses?

24 A. Those are the vehicle maintenance, the

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 garage.

2 Q. And that's another reimbursement you pay to the

3 city?

4 A. Yes. It's our share of the cost for them to

5 maintain our vehicles and equipment.

6 Q. And that amount as of June 30, 2005 is

7 \$59,246.30?

8 A. Yes.

9 MR. PETROS: Okay. Thanks.

10 Q. And the next one is sludge payment due to water

11 pollution control, third quarter.

12 A. Yes.

13 Q. What's that?

14 A. That's the sludge charge from Station One

15 that discharges its sludge into the system that

16 goes to the wastewater treatment plant.

17 Q. Okay. And you make a payment to the city for

18 that?

19 A. We make a payment to the water pollution

20 control fund.

21 Q. And you were -- your amount, your payable on that

22 as of June 30th was \$27,926.34?

23 A. 926.34.

24 Q. I'm sorry. You're right. And the last one just

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 says vendors. Is that for third party vendors?

2 A. That's materials, supplies and that's every

3 invoice that we have. I mean, whether or not --

4 it could have been received June 29th, it would

5 be there which would mean it's not overdue, but

6 that's all invoices for everything else.

7 Q. Is that city related at all?

8 A. No. Those are vendors to the water fund.

9 Q. So the first four items I mentioned are all

10 related to the city; the fifth one is not related

11 to the city.

12 A. And the sludge isn't related to the city.

13 Q. All right. Fine. So just the first three are

14 related to the city.

15 A. For city services, yes.

16 Q. City services. Okay. Thank you. Is it Newport

17 Water's intention right now to repay -- absent an

18 order by the Commission to the contrary, is it

19 Newport Water's intention right now to repay to

20 the city from money collected from rates the

21 \$709,000 that it owed to the city as of June 30,

22 2005?

23 MR. KEOUGH: Objection.

24 THE CHAIRMAN: What's the basis?

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 MR. KEOUGH: Where's the foundation

2 that that money is owed at this point?

3 THE CHAIRMAN: Well, the documents

4 which were presented in evidence indicate this.

5 Are you challenging --

6 MR. KEOUGH: I'll save it for redirect.

7 A. The payrolls that we have that are due are

8 from fiscal year '07, so we would intend to pay

9 those back. We keep track of all the payrolls

10 that haven't been transferred, so I don't have

11 the list of what payrolls as of June 30th

12 comprise that 1.2 million, but they are from FY

13 '07.

14 Q. Miss Fogue, as of June 30, 2005 Newport Water

15 owed the city \$709,000, correct?

16 A. That was listed in the annual report, yes.

17 Q. Is it correct? It is your annual report?

18 A. It is the city's and water fund's annual

19 report. There was payroll. I don't know what

20 the other number comprises of. Yes, there was a

21 list of what payroll was outstanding.

22 Q. Let me try it again. As of June 30, 2005 Newport

23 Water owed the city approximately \$709,000.

24 A. It's listed in the annual report, yes.

A-1 COURT REPORTERS, INC.
(401) 405-0410

- 1 Q. That indebtedness has grown over the last
2 three years.
- 3 A. It's rolled. As that was paid off, then
4 there would be other expenses. Yes. We owe more
5 now than we owed at that point in time.
- 6 Q. You've owed more each year.
- 7 A. Yes. It varies. At the point in time that
8 it's reported, that's one point in time, but it
9 changes.
- 10 Q. And is it Newport Water's intention today to
11 repay the entire amount of the indebtedness it
12 presently owes to the city including the
13 \$709,000?
- 14 A. I'm not sure where the 709,000, but right now
15 what's owed, that's on the cash flow, yes, that
16 would be our intent, the June 30th cash flow.
- 17 Q. I'm going to move to a different topic now. Let
18 me just cover briefly the city services question
19 because I think some of that has been covered
20 already and I know it's discussed extensively in
21 the testimony. There's been some back and forth
22 I know between Portsmouth and Newport on some of
23 the city services allocations including the
24 accounts that I think Mr. Nault mentioned

A-1 COURT REPORTERS, INC.

(401) 405-0410

- 1 don't think it's -- I can't say whether or not
2 it's verbatim in any of the current testimony in
3 this docket.
- 4 Q. It's not in there, is it?
- 5 A. I don't -- I don't know. I don't believe so.
- 6 MR. PETROS: Okay.
- 7 THE CHAIRMAN: Let me interrupt and ask
8 this question. When you receive bills from Mr.
9 Keough, I hope this is not within the privilege,
10 I assume that you ask for a detailed bill based
11 on the hourly rate based on certain specific
12 services that he rendered to Newport Water
13 Department.
- 14 THE WITNESS: Yes.
- 15 THE CHAIRMAN: Have you ever thought of
16 doing the same thing with the City of Newport
17 Warwick -- City of Newport? I keep saying
18 Warwick. Newport. Did you ever think of asking
19 them for a detailed bill for the services that
20 they're billing you for?
- 21 THE WITNESS: No.
- 22 THE CHAIRMAN: I'm not saying that you
23 should. I'm asking you if you ever did that.
- 24 THE WITNESS: Okay.

A-1 COURT REPORTERS, INC.

(401) 405-0410

- 1 earlier, City Council, City Manager, City
2 Solicitor and maybe one or two others. And I
3 know that you maintain, Miss Fergue, in your
4 testimony that those allocations are appropriate,
5 but let me ask you just this one question. Can
6 you -- is there anywhere in your rebuttal
7 testimony or in your direct testimony that you
8 actually list the services that any one of those
9 offices has provided or did provide to Newport
10 Water during the test year?
- 11 A. I don't believe there is any precise listing
12 that was included, no.
- 13 Q. I mean, I know that I've read -- you claim in
14 your testimony that there were valuable services
15 rendered. My question is do you state in your
16 testimony what those services actually were in
17 the test year?
- 18 A. I think it's been general statements. I
19 don't give specific dates as to when a department
20 has provided services.
- 21 Q. Do you describe, for example, by category the
22 services rendered by the City Council to the
23 water department?
- 24 A. I know we've discussed it in the past, but I

A-1 COURT REPORTERS, INC.

(401) 405-0410

- 1 THE CHAIRMAN: You wouldn't pay a bill
2 to Mr. Keough if he just said, "Here it is, for
3 services rendered, \$50,000. I want payment
4 within 30 days." You wouldn't pay that bill,
5 would you?
- 6 THE WITNESS: No, I wouldn't.
- 7 MR. KEOUGH: Not within 30 days.
- 8 THE WITNESS: We wouldn't pay any bill
9 in 30 days.
- 10 THE CHAIRMAN: But why wouldn't you pay
11 that bill?
- 12 THE WITNESS: We would want a list of
13 the services he provided to make sure the bill
14 was justified.
- 15 THE CHAIRMAN: Go ahead. You may
16 proceed.
- 17 MR. PETROS: I was going to change
18 sides if the answer was yes.
- 19 COMMISSIONER HOLBROOK: Miss Fergue, if
20 you did not have this arrangement with the city
21 whereby they advance, they meet the payroll, they
22 give you money to meet operating expenses and
23 whatnot, if you did not have that facility, what
24 would your plan be? How would you operate? This

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 covers a number of years obviously.

2 THE WITNESS: Without the support of
3 the city the water fund would not be -- it would
4 be difficult to continue to operate. We pay --
5 the city does not pay any of our vendors. The
6 only thing they cover are, like, we don't
7 transfer the funds for their services or for the
8 payroll, but they do not supplement any payments
9 to any of our vendors, to our consultants or any
10 of our projects, capital projects. So it's
11 strictly the services they provide.

12 COMMISSIONER HOLBROOK: I had said
13 earlier this morning that the basic problem goes
14 back to the weather and then secondarily to the
15 delay in being able to realize increases in your
16 rate structure that are approved by the
17 Commission, it takes a while for those to go into
18 effect, and one of the things that I said, I
19 believe, was that the infrastructure can suffer
20 severely if over a period of years, not too many,
21 two, three, four, five, not having the money to
22 put back into the infrastructure of the water
23 company, pipes and whatnot, and Mr. Keough noted
24 after lunch I guess that Newport Water had the

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 underfunding your restricted accounts.

2 THE WITNESS: Right. We would probably
3 defer -- it would be deferred maintenance which
4 would lead to the problems.

5 COMMISSIONER HOLBROOK: It's kind of
6 the reverse of the old adage that you can't put
7 ten pounds of sand in a five-pound bag. You
8 can't spend more than comes in through your
9 revenue stream.

10 THE WITNESS: Right.

11 MR. PETROS: May I?

12 THE CHAIRMAN: Yes.

13 Q. And as Commissioner Holbrook just said I think,
14 Miss Forgue, it's that chronic shortfall in
15 revenue that's created this structural deficit.
16 A. Yes.

17 Q. Okay. I'm going to move to a new topic. This
18 will be another brief one I hope. I asked Mr.
19 Smith some questions about prorating bills. I
20 just want to ask you a couple of questions on
21 that. You probably know the answer. After the
22 last docket did Newport Water prorate bills to
23 its customers?

24 A. No, we did not.

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 luxury of not having that problem because your
2 restricted accounts, your capital accounts are
3 restricted and you fund them 100 percent.

4 Now, that's the good news. The bad
5 news is because you fund them and don't create a
6 problem, you can do your capital work, you don't
7 have money to pay your vendors and to meet your
8 payroll. So it's just a vicious circle and the
9 problem after we get done with transfers and
10 restricted accounts and everything else, the
11 fundamental problem is a systemic one. I mean,
12 your revenue stream is not strong enough to
13 support your operation. That's what I conclude.
14 Am I wrong? If I am, please tell me.

15 THE WITNESS: Yes. The vendors
16 associated with the capital projects, those are
17 paid. It's just the vendors more on the O&M
18 side.

19 COMMISSIONER HOLBROOK: But if you did
20 not have the requirement to fund the restricted
21 accounts as you do, you'd have a problem there
22 but your problem in not being able to pay your
23 bills would be less severe. You would have to
24 borrow less money from the city at the expense of

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 Q. Do you know how much that cost you in revenue?

2 A. No, I do not.

3 Q. Is there a reason why you chose not to prorate
4 bills to customers following the effective date
5 of the last rate increase?

6 A. I guess it would be -- our opinion was that
7 we would start trying to estimate how much of the
8 water that was used in the new higher rate versus
9 the lower rate. So in order -- we felt it would
10 be fairer to our customers to -- in order to be
11 certain as to the water that we're billing them
12 is all at the new rate. The monthly bills
13 obviously started right away. It was the
14 tertiary bills that we waited until all their
15 water -- the tertiary bill included all the water
16 at the new rate. Otherwise, we would have been
17 estimating and we feel, you know, the question is
18 sort of like with the billing charge. How did we
19 come up with that figure? We would have been
20 kind of arbitrarily trying to determine what the
21 customers were and also fiscal year '06 was our
22 first year with the new billing. That was right
23 when we started with the new billing software so
24 we were still going through the whole conversion

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 what happened in Washington, DC. There was a
2 conversion. They used chloramines to address
3 their disinfectant byproduct and they had a
4 massive lead release into the system and it led
5 to a lot of issues in their system and they're
6 still -- I'm not even sure if they got the lead
7 levels down at this point. So a recommendation
8 was made to just let's confirm what the lead
9 scale was in Newport.

10 They did -- we sent -- our lead scale
11 was sent to EPA's lab in Cincinnati, this was all
12 part of the design contract with CDM, and what
13 was found was that we, in fact, didn't have this
14 lead two, we have what's referred to as lead four
15 and we had a lead oxide, and EPA was involved in
16 this whole issue in Washington, DC and what they
17 found in Washington, DC, they did not have the
18 lead scale that all the science would say would
19 be a lead two, it was the lead four, and what
20 they found with the lead scale in our system it's
21 almost pure lead four.

22 So at that point the experts kind --
23 you know, it's like if we moved forward in the
24 normal progression which we probably would have

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 Newport system we're also not impacting lead and
2 what is the effect on the lead levels in their
3 system with any change.

4 So there's these 11 pipe loops with all
5 these different combinations of pH and adding
6 chloramines which will be introduced after these
7 pipe loops are conditioned and these pipe loops
8 will just run continuously with water from the
9 plant and then it will be continuously monitoring
10 to determine what is the best option with the use
11 of chloramines with pH, maybe adding some
12 orthophosphate to get to the point that we could
13 convert to control the disinfectant byproduct but
14 not create a lead issue.

15 Q. I want to ask you some questions about the annual
16 report that Mr. Petros showed you. May I
17 approach the witness?

18 THE CHAIRMAN: Sure.

19 Q. There was a question on money owed to Newport at
20 the end of June 30, 2005 and there was a line
21 item for City of Newport other funds and there
22 was a figure of approximately 353,000. It was
23 exactly \$353,340, is that correct?

24 A. Yes.

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 done 20 years ago, we would have just gone ahead
2 and said let's start converting to chloramines we
3 would have had a lead outburst.

4 Q. So the testing is extensive so that you go
5 forward on a thoughtful and responsible basis.

6 A. At this point when this all became aware we
7 had to sit back and we -- as part of the design
8 we had an expert panel look at all the data we
9 collected and EPA is now involved instead of
10 where we had originally budgeted maybe for two
11 pipe loops because we thought -- the idea would
12 be what would be the optimum pH for the use of
13 chloramines we are now looking at -- it's a loop
14 system which will be up for -- right now they're
15 being conditioned. We actually took lead
16 services, we harvested lead systems from the
17 Newport's system and it's in the pipe loops where
18 we actually have water in the plant running
19 through to -- and then we also have some where
20 we're going to have it set up with a meter and
21 some valves because while, you know, the other --
22 Portsmouth and the Navy may have lead issues,
23 they don't have lead services, so we have to make
24 sure whatever we do to protect the lead in the

A-1 COURT REPORTERS, INC.
(401) 405-0410

1 Q. Do you know, does that represent accrued expenses
2 that you actually received a bill for in July but
3 it related to the previous fiscal year?

4 A. That's my understanding, that anything -- it
5 could -- exactly. It could be an invoice that
6 was received for services in the fiscal year but
7 we received it after June 30th. So there was no
8 way for it to have been paid during the fiscal
9 year because we didn't have the invoice.

10 Q. So you couldn't pay it in fiscal year '05 because
11 you didn't have the invoice.

12 A. That's correct.

13 Q. But since it related to an '05 expense it had to
14 be accrued in the annual report in '05.

15 A. Correct.

16 Q. Let me ask you another question --

17 THE CHAIRMAN: If you're an accrual
18 basis taxpayer, wouldn't that validate the amount
19 that's owed as of that date?

20 MR. KEOUGH: I'm not saying it
21 wouldn't, but we would have absolutely no way to
22 pay it if we hadn't gotten the bill until July.
23 So even if we had --

24 THE CHAIRMAN: I understand that, but
A-1 COURT REPORTERS, INC.

(401) 405-0410

1 you're not calling into question the amount
2 actually being owed as of that date.

3 MR. KEOUGH: Well, it would have been
4 owed on that date, but you would have no way of
5 paying it. Had the bill come in in June, it may
6 very well have been paid.

7 THE CHAIRMAN: The issue is whether or
8 not you can recover for expenses incurred prior
9 to that date. This question does not change that
10 conclusion.

11 MR. KEOUGH: Well, it changes it to the
12 extent -- I would respectfully disagree that if
13 you don't have a bill before June 30th of '05,
14 you have no way --

15 THE CHAIRMAN: I know you're not an
16 accountant, but you know the difference between
17 an accrual basis --

18 MR. KEOUGH: I do.

19 THE CHAIRMAN: If you're an accrual
20 basis taxpayer and that report reflects that as
21 being owed, it's owed as of that date whether or
22 not you received a bill. Okay?

23 MR. KEOUGH: Correct. However, had you
24 received the bill you may have made the choice to

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 A. Yes.

2 THE CHAIRMAN: Mr. Keough, is it your
3 contention that the amount that's indicated as
4 being owed as of June 30th, 2005 is not correct?

5 MR. KEOUGH: I'm not, Chairman.

6 THE CHAIRMAN: Oh, all right.

7 MR. KEOUGH: Just that those payrolls
8 have been paid.

9 THE CHAIRMAN: Okay. What was
10 outstanding at that point has been paid.
11 Okay.

12 COMMISSIONER BRAY: So the 1,259,000 is
13 not necessarily even any of the 938 from '06; is
14 that what you're saying?

15 MR. KEOUGH: Correct. Correct.

16 THE CHAIRMAN: Wait a minute now.

17 Let's not get confused here. The issue before us
18 is what you can recover in increased rates and
19 the settlement agreement provides you can't go
20 for anything that was accrued as of June 30,
21 2005, not thereafter.

22 MR. KEOUGH: However, I would argue,
23 Chairman, and I will argue, obviously, that it's,
24 you know, it is a matter of, you know, which

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 make that payment so that it would not be
2 reflected because it would have been paid. If I
3 get bill June 1st, I pay it --

4 THE CHAIRMAN: Mr. Keough, now you're
5 engaging in hypotheticals, aren't you?

6 MR. KEOUGH: I don't think I am, but
7 I'll leave that to the Commission to decide.

8 Q. One other question. There was a question
9 directed to you about payroll that was
10 outstanding as of June 30th, '05 and the annual
11 report does not identify the payrolls and you
12 indicated that it would not break out which
13 payrolls were owed, but the -- what I have is the
14 monthly cash flow narrative for the end of the
15 month June '05 and it does identify the payrolls
16 that were owed, correct?

17 A. Yes.

18 Q. And those payrolls appear to be 6/2/05, 6/16/05
19 and 6/30/05, correct?

20 A. Yes.

21 Q. And then there were two others, May 5th and
22 May 19th as well of '05, correct?

23 A. Yes.

24 Q. Have those payrolls been paid now?

A-1 COURT REPORTERS, INC.

(401) 405-0410

1 position you take. We maintain that the money
2 that was owed as of June 30, '05 has been paid.
3 So the current figure that we have does not
4 include any money that was owed June 30th of '05.

5 THE CHAIRMAN: You're not taking the
6 position that that statement in that report is
7 incorrect.

8 MR. KEOUGH: I am not.

9 THE CHAIRMAN: Well, that determines
10 what you owe as of that date, doesn't it?

11 MR. KEOUGH: But what we're asking --
12 we're not asking for rates now to recover what
13 was owed in '05. That money has been paid. So
14 we're not asking for money in rates to pay what
15 was owed in '05. That money has been paid.

16 THE CHAIRMAN: That's not -- you can
17 make your argument. I'm not going to argue with
18 you now.

19 Q. One other question. I wanted to ask you about
20 the CDM report. Mr. Petros indicates that this
21 report did not comport with the settlement
22 agreement in Docket 3675, that it examined
23 providing Portsmouth with the same water age as
24 it did in Newport and you disagree with that,

A-1 COURT REPORTERS, INC.

(401) 405-0410