



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400

TDD (401) 453-0410

Patrick C. Lynch, Attorney General

October 7, 2009

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: Docket No. 4061

Dear Ms. Massaro,

I am writing on behalf of the Division of Public Utilities and Carriers (“Division”) to express the agency’s concerns regarding the Commission’s decision at Open Meeting on October 5, 2009 which continues Providence Water’s 3% Operating Revenue Allowance (“ORA”)¹ while requiring the utility to collect an additional \$92,000 per month and deposit that amount into the utility’s IFR account up to a limit of \$2.5 Million (the “Proposed Settlement Modification”). The Division’s concerns are both procedural and substantive in nature.

The Commission had scheduled a hearing on September 29, 2009 in order to consider approval or rejection of a settlement agreement (“Settlement”) that had been filed by the parties to this proceeding on or about September 10, 2009.² A few days prior to the hearing, Commission counsel informed the parties that the Commission had some reservations regarding Paragraph 3(H). Unfortunately prior to the hearing, the Division and the other settling parties were not apprised that the Commission was considering

¹ 2% of which is restricted.

² At time that the hearing date was scheduled, the Division informed the Commission that its expert consultant, Thomas S. Catlin, would not be available to testify on that date. Since the only issue that remained in dispute, prior to consummation of the Settlement, was a provision in the Settlement, Paragraph 3(H) dealing with the ORA, the Division apprised the Commission that with the resolution of this issue, John Bell, Public Utility Rate Analyst, would testify on behalf of the Division as to the merits of the Settlement.

alternative modifications to Paragraph 3(H), the specific terms of these modifications, or, that these modifications would become a subject of the hearing that transpired on September 29, 2009. During the hearing on September 29, 2009, the Commission, through counsel proposed two alternative modifications to the Settlement in lieu of the agreed to 5% ORA: (i) a surcharge in lieu of an additional 2% operating reserve, or (ii) the Proposed Settlement Modification.

While it is certainly within the Commission's prerogative to propose modifications or conditions to the Settlement, it would have been useful if the parties had notice of the specifics of the proposed modifications and a reasonable time in advance of the September 29, 2009 hearing to contemplate them. Without such notice, the Division and the other parties were left to argue the merits of the proposal extemporaneously at hearing and through these written comments after the matter has already been decided.

As Mr. Bell testified at the hearing, the Proposed Settlement Modification is not the Division's preferred or recommended alternative. The Proposed Settlement Modification does not resolve Providence Water's operating deficit on a long-term basis, and does not afford ratepayers the same degree of protection as the Settlement as filed.

Providence Water's current operating deficit as of the end of FY 2009 is \$4.3 Million and climbing. Even with \$1.9 Million in the ORA applied to this operating deficit and continuing the 3% ORA in its current form, the Proposed Settlement Modification will not come close to eliminating Providence Water's operating deficit by the end of FY 2011. As a consequence, Providence Water, in all probability, will simply file for further rate relief next year, and ratepayers will bear all of the unnecessary expenses associated with such a filing. Indeed, correspondence from Providence Water to the Commission dated October 5, 2009 apprises the Commission of just such an eventuality.

Instead of dealing with the operating deficit, the Proposed Settlement Modification provides an additional \$2.5 Million of IFR funding. The Division believes that shortfalls in IFR funding in the case of the Providence Water are a less critical issue at this juncture than the shortfall in operating funds. IFR spending can be deferred and managed within limits for a time. As an example, when available, Providence Water takes advantage of loans made available through the Drinking Water State Revolving Fund to complete additional IFR projects. Currently Providence Water has an application before the Division in Docket D-09-96 to borrow approximately \$13 Million of which approximately \$10 Million is proposed to be utilized for IFR projects such as water main replacement. This funding source along with the ongoing funding provided in rates and the June 30, 2009 balance in the IFR account of approximately \$10 Million will provide close to \$50 Million of IFR funds for the 2-year period beginning July 1, 2009.

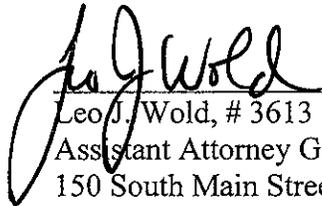
Moreover, it is unclear whether the Commission adopted the operating reserve restrictions outlined in Paragraph 3(H) of the Settlement. It is the language contained in this section of the Settlement that provides ratepayer protections and gave the Division

comfort in agreeing to Providence Water's proposal for a 5% operating reserve at this time, especially in light of the continuing decline in consumption.

The Division continues to believe that the Settlement, Paragraph 3(H), contains the most appropriate mechanism for addressing Providence Water's current and projected operating deficits. Due to Providence Water's immediate need for rate approval, the Division will not oppose the Proposed Settlement Modification. We do, though, request and recommend that the Commission, based on the Record and without further hearing, reconsider its October 5, 2009 decision, and approve the Settlement as filed.

Respectfully submitted,

Division of Public Utilities and Carriers



Leo J. Wold, # 3613
Assistant Attorney General
150 South Main Street
Providence, RI 02903

cc: Service List