

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: CITY OF WOONSOCKET WATER DIVISION :
TARIFF ADVICE FILING TO ADD A SEPARATE :
FIRE SERVICE PROTECTION CHARGE ON CITY : DOCKET NO. 4309
OF WOONSOCKET CUSTOMERS BILLS PURSUANT :
TO R.I.G.L. §§ 39-3-11.1(c) AND 45-39-4 AND CITY :
OF WOONSOCKET ORDINANCE NO. 11-0-73 :

REPORT AND ORDER

On December 30, 2011, the City of Woonsocket Water Division (“WWD”) filed with the Public Utilities Commission (“Commission”) a Tariff Advice Filing to implement a new Fire Service Protection Charge to appear in the customer service charge on the water bills for each WWD service connected in the City of Woonsocket. This new Fire Service Protection Charge was authorized by the Woonsocket City Council pursuant to City of Woonsocket Ordinance No. 11-0-73 (“Hydrant Ordinance”)¹ which itself was authorized by R.I.G.L. §§ 39-3-11.1(c) and 45-39-4. Rhode Island Gen. Laws § 39-3-11.1(c) states: “In setting rates for publicly owned water authorities, the commission shall not require the payment of rental fees for fire hydrants from any municipality that has prohibited such fees by ordinance as provided in section 45-39-4 and has given notice to the commission of said ordinance.”²

On December 22, 2011, the City of Woonsocket filed with the Commission the Hydrant Ordinance which had been passed by the City Council on November 14, 2011 and December 5, 2011, and signed by Mayor Leo T. Fontaine on December 9, 2011. The effect of the Hydrant

¹ City of Woonsocket Ordinance No. 11-0-73 was unanimously passed by the City Council.

² R.I. Gen. Laws § 39-3-11.1(c). R.I. Gen. Laws § 45-39-4 states: Notwithstanding any general or special law relating to publicly owned water authorities, a municipality may provide by enactment of an ordinance and complying with the notice requirements of section 39-3-11.1, that the rental usage or fees for any fire hydrant within the municipality shall be the responsibility of the water ratepayers within the municipality which enacted the enabling ordinance, provided that this provision shall apply only where the municipality owns the water supplier and is the exclusive supplier of public water within the municipality.

Ordinance was that WWD could no longer collect the Commission-approved public fire service charges from the City of Woonsocket as of December 22, 2011. Instead, in accordance with State law and the Hydrant Ordinance, “the rental or other charges for any fire hydrant located within the city which is supplied by the Water Division shall be the responsibility of the water ratepayers of the Water Division.”³

Therefore, WWD, through its filing, sought to collect the public fire service charges for hydrants located in the City of Woonsocket from those ratepayers whose service connections are within the borders of the City of Woonsocket. In support of its filing, WWD submitted the Pre-Filed Testimony of Walter E. Edge, Jr., MBA, CPA and David G. Bebyn, CPA, its consultants. Mr. Edge explained that the result of the Hydrant Ordinance was a loss of revenue from the City of Woonsocket in the amount of \$567,698. Mr. Edge explained that WWD based its rate design for the collection of this lost revenue on the size of the meters. He noted that when public hydrant fees were paid through property taxes, larger properties had more cost responsibility than smaller properties. Larger properties tend to have larger meters so recovering the lost revenues on the basis of meter size maintained a similar cost responsibility in the water rates as there was in the property tax rate.⁴ He also explained that WWD was seeking to add the new charge to the customer service charge rather than as a separate line item in order to avoid customer confusion.⁵

Mr. Bebyn explained that in order to develop the proposed rates, he divided the revenue requirement by the total equivalent meters for in-city ratepayers to arrive at the dollar amount necessary per equivalent meter per year. Then, using the meter equivalent ratios from Docket No. 3800, the last rate case, he applied the rate per equivalent meter times these meter equivalent ratios. He then divided the result by four to arrive at a quarterly charge which he added to the in-

³ City of Woonsocket Ordinance No. 11-0-73.

⁴ WWD Exhibit 1A (Pre-Filed Testimony of Walter Edge) at 2-3.

⁵ *Id.* at 3.

city customer service charge.⁶ Responding to a Commission data request, Mr. Bebyn explained that the customer service charge was comprised of two components, the first to cover billing and collection and the other to cover maintenance of meter and service related assets.⁷

On January 24, 2012, the Division of Public Utilities and Carriers submitted a Memorandum from John Bell, Rate Analyst V, commenting on WWD's proposed tariff changes. Mr. Bell summarized the filing and found the calculations to be correct. However, the Division disagreed with the method of collections insofar as WWD was seeking to include the Hydrant Charge in the customer service charge. Rather, Mr. Bell stated that "the Division believes that since fire protection is a separate service that it would be more appropriate to show it as a separate line item on customers' bills which will provide transparency and full disclosure to ratepayers."⁸ Therefore, the Division recommended approval of the proposed rates but also recommended the Commission require WWD to show the Hydrant Charge as a separate line item on the bill.⁹

On January 26, 2012, pursuant to public notice, the Commission conducted a hearing at its Offices at 89 Jefferson Boulevard, Warwick, Rhode Island for the purposes of accepting public comment and taking evidence on WWD's request. The following appearances were entered:

FOR THE WWD:	Alan M. Shoer, Esq.
FOR THE DIVISION:	Jon Hagopian, Esq. Special Assistant Attorney General
FOR THE COMMISSION:	Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel

⁶ WWD Exhibit 1B (Pre-Filed Testimony of David Bebyn) at 2-3.

⁷ Commission Exhibit 2 (WWD Response to COM 1-7).

⁸ Division Exhibit 1 at 1.

⁹ *Id.* at 2.

WWD presented Mr. Edge and Mr. Bebyn in support of WWD's Tariff Advice filing. Mr. Edge and Mr. Bebyn explained that WWD's plan was to advise customers of the reason for the increase in the customer charge, but not to break it out separately on the bills, not to hide the charge, but to avoid customer confusion associated with a new charge on the bill. Mr. Edge conceded that public fire service is not usually a component of a customer charge. He nonetheless believed it would be appropriate to either include the hydrant charge in the customer charge or to show it separately on the bills.¹⁰ Mr. Bebyn stated that WWD expected to include the charge in the third quarter billings for FY 2012 which are all sent at the same time as WWD is not on cycle billing like some other utilities.¹¹ With regard to the hydrant charges for the period prior to December 22, 2011, WWD submitted a response to a record request indicating that the City had not paid the charges for FY 2012 through December 21, 2011 and did not intend to.¹²

Commission Findings

On February 1, 2012 the Commission conducted an Open Meeting to consider the evidence and after due consideration, the Commission approved WWD's Tariff Advice filed on December 30, 2011 for effect on bills issued on and after February 1, 2012. However, the Commission directs WWD to show the hydrant fee as a separate line item on bills rendered to the residents of the City of Woonsocket for public hydrants within the city limits. The requirement that this charge appear separately on customers' bills is consistent with the Commission's approval of similar charges on the Providence Water Supply Board and Pawtucket Water Supply Board bills. In addition, this is consistent with the Commission's policy of transparency of charges on utility bills.

¹⁰ Tr. 1/26/12 at 15-20.

¹¹ *Id.* at 25.

¹² WWD's Response to Commission Record Request 1.

The Commission finds that the City of Woonsocket owns the water system and that the water system is the exclusive supplier of public water within the City of Woonsocket. The Commission finds that the Hydrant Ordinance exempts the City of Woonsocket from paying public hydrant fees to the WWD and specifically states that the hydrant fees for “any fire hydrant located within the city which is supplied by the Water Division shall be the responsibility of the water ratepayers of the Division.”¹³ Therefore, the Hydrant Ordinance meets the requirements of R.I. Gen. Laws §§ 39-3-11.1(c) and 45-39-4.

Unfortunately, during the Commission’s review of the filing, it became clear through WWD’s response to a Commission Record Request that the City of Woonsocket had not paid WWD for the hydrant fees that accrued prior to December 22, 2011 and that it did not intend to, having not budgeted for such payments. If left unpaid, the resulting lost revenue to WWD would be \$272,932.¹⁴ The annual City Service Charges built into rates is \$281,162.¹⁵ Therefore, the Commission requested comments from the parties to the following: Where the City of Woonsocket has indicated it does not intend to pay the hydrant fees for FY 2012 that accrued prior to the notification of the Commission pursuant to R.I. Gen. Laws Sec. 39-3-11.1, the appropriateness under ratemaking principles of netting the 25 weeks of hydrant fees owed to WWD against the City Service charges that would be paid by WWD to the City of Woonsocket in FY 2012.

On February 29, 2012, the Division filed a response and on March 1, 2012, WWD filed its response. Both parties responded that the proposal would not be inappropriate from a ratemaking perspective. The WWD cautioned against this on the basis that the City of Woonsocket is facing a difficult financial situation and “any recognition of this liability at this

¹³ City of Woonsocket Ordinance 11-0-73.

¹⁴ Annual Hydrant Charge from in-city customers (\$567,698/52 weeks)(25 weeks) = \$272,931.73.

¹⁵ Docket No. 3800 Schedule Settlement-1B.

time will require the City to book the expense, which has the serious potential of endangering the City's already fragile financial viability."¹⁶ WWD suggested a payment plan be approved by the Commission or that the matter be addressed in WWD's next rate filing.¹⁷

The Division stated that the Commission already set the appropriate level of the hydrant fees and City Service payments and therefore, the question now is not whether the charges are valid but one of collections. In response to WWD's request, from its response to the Commission's record request, that the collection of the FY 2012 hydrant charges from the City of Woonsocket be waived, the Division stated that "the commission has already determined through the ratemaking process that the hydrant charges are just and reasonable and that the revenues generated from these charges are necessary for the operation of the WWD. Since the Commission has already made this determination, the Division recommends against waiver of these charges. Netting the amount of hydrant charges owed the WWD against City Service charges results in the same financial impact as the actual transfer of funds."¹⁸ Therefore, the Division did not oppose such a solution.¹⁹

Therefore, since neither party disputed the fact that the money is owed to WWD from the City of Woonsocket and both parties agreed that the Commission could appropriately net the hydrant charges owed to the WWD against the City Services WWD would have to pay the City, on April 11, 2012, at an open meeting, the Commission found that the City of Woonsocket owes hydrant fees through December 21, 2011 to the WWD. Furthermore, the Commission found that WWD shall net the Hydrant Fees it is owed by the City against the City Services it is required to

¹⁶ WWD's Comments at 1.

¹⁷ *Id.* at 1-2.

¹⁸ Division's Comments at 2.

¹⁹ *Id.*

pay to the City at the level allowed in Docket No. 3800 until such time as the hydrant fee receivable has been reduced to zero.

In approving WWD's rates in Docket No. 3800, the most recent rate case, the Commission approved a cost of service which included the \$272,932.²⁰ The Commission has taken testimony in multiple water matters, including WWD that if collections are down there is reduced funding for restricted accounts. If there is reduced funding for restricted accounts, under various Trust Indentures, the last account funded is the IFR account.²¹ This does not just affect Woonsocket residents. The WWD is funded from rates collected from customers both inside and outside the city borders. This is one of the reasons the WWD is regulated by the Commission. The purpose is to ensure no discrimination by a utility against customers residing outside of the borders of the municipality. If WWD's collections are down by approximately 3.5%, exclusive of any other revenue reductions due to a decline in usage, etc., all customers will suffer from a reduced funding of the IFR accounts.²² Furthermore, because the Commission is required to set rates on a prospective basis, there is not a clear ratemaking mechanism by which to make WWD whole through an increase in prospective rates.

While this matter was not in the control of the WWD, it was entirely in the control of the City of Woonsocket. The City of Woonsocket "was aware (on or around June of 2011) that the statute governing the charging of hydrant fees was changed by the General Assembly. Further the City anticipated that the Council was going to act on the new statute. Therefore, the City, for

²⁰ Docket No. 3800 Schedule Settlement-1B.

²¹ See Restricted Account Activity Period March 1, 2010 to June 30, 2010; Restricted Account Activity Period July 1, 2010 to October 31, 2010; Restricted Account Activity Period November 1, 2010 to February 28, 2011; Restricted Account Activity Period March 1, 2011 to June 30, 2011; Restricted Account Activity Period July 1, 2011 to October 31, 2011 (all filed January 20, 2012), stating, "Due to operating shortfalls the restricted funding were adjusted to reflect the available funding for the year. After funding O&M, WWD is required per RICWFA trust indenture to fund next rate case and chemicals, then debt service followed by renewal & replacement and lastly IFR."

²² The amount of revenues in question equals approximately 3.5% of WWD's total expenses. (Docket No. 3800 Schedule Settlement-1B).

the 2012 fiscal year, did not include a budget payment amount for hydrant fees in the City Fire Department's budget. Likewise, the City did not budget the revenue in the enterprise fund (City Water Department).²³ The City requested that the Commission waive the City's responsibility of paying the hydrant fees through December 21, 2011. The City maintained that the WWD was not anticipating any revenue from the City so not paying the hydrant fees would not be a hardship to WWD.²⁴

The fallacy in the City's response is the statement that WWD was not anticipating revenue from the City for five months and therefore, failure to pay the hydrant fees would not be a hardship to the WWD. While it may be true that WWD was not expecting to be paid hydrant fees by the City *once the Ordinance was passed and filed with the Commission*, the WWD was expecting to be able to collect the hydrant fees from its in-City ratepayers.²⁵ However, *this could not happen until the Ordinance was passed and filed with the Commission*.

Therefore, the City had control over the timing of the passage of and filing of the Ordinance. The City of Providence had its Ordinance passed by July 19, 2011, a mere 19 days after the start of the fiscal year. The City of Providence owed its fire hydrant payments through August 19, 2011 based on the timing of the filing of the Ordinance with the Commission, something which was not disputed by the City of Providence.²⁶ Therefore, it is by the City of Woonsocket's own actions that it now owes the WWD almost \$300,000 in hydrant fees.

It is this Commission which sets the public utility's cost of service. That cost of service set in Docket No. 3800 included revenues from hydrant fees to be collected from the City of

²³ WWD's Response to Commission Record Request 1.

²⁴ *Id.*

²⁵ R.I. Gen. Laws § 39-3-11.1(c) states: In setting rates for publicly owned water authorities, the commission shall not require the payment of rental fees for fire hydrants from any municipality that has prohibited such fees by ordinance as provided in § 45-39-4 and has given notice to the commission of said ordinance.

²⁶ Order No. 20590 (issued 12/15/11).

Woonsocket. This is one of the reasons it makes sense that the legislation allowing the City of Woonsocket to avoid paying hydrant fees through taxes also required that those lost revenues be recovered from the City's residents through water rates.²⁷ Therefore, the General Assembly, in passing the legislation, recognized that the hydrant fees are a cost of serving customers, are built into the water utilities' rates as approved by the Commission, and need to be recovered through those rates. It is irrelevant that the City of Woonsocket simply made a decision not to include the revenues in the Water Department Budget and the expense in the Fire Department Budget. WWD's rates are designed to collect in rates the cost of maintaining a system that is oversized in order to provide fire protection service.²⁸ By not including the revenues in the Water budget nor the expenses in the Fire budget and by delaying the passage of the ordinance which would trigger a filing at the Commission to allow the recovery of the lost revenues by the WWD, the City put the WWD and itself in the situation where the WWD is facing lost revenues of almost \$300,000 which are still the responsibility of the City. Had the City of Woonsocket passed its Ordinance in a timely manner, it may have only owed a fraction of what it now faces.

Accordingly, it is hereby,

(20722) ORDERED:

1. The rates filed by the City of Woonsocket Water Division amending the Public Fire Protection and Customer Service Charge, filed on December 30, 2011 are hereby approved for effect February 1, 2012, provided however, that the fire protection charge shall be set forth as a separate line item on customers' bills.

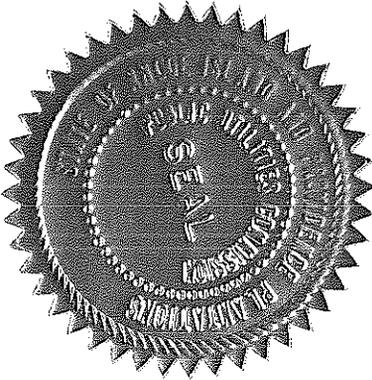
²⁷ R.I. Gen. Laws § 45-39-4 states: Notwithstanding any general or special law relating to publicly owned water authorities, a municipality may provide by enactment of an ordinance and complying with the notice requirements of § 39-3-11.1, *that the rental usage or fees for any fire hydrant within the municipality shall be the responsibility of the water ratepayers within the municipality which enacted the enabling ordinance*, provided that this provision shall apply only where the municipality owns the water supplier and is the exclusive supplier of public water within the municipality. (emphasis added).

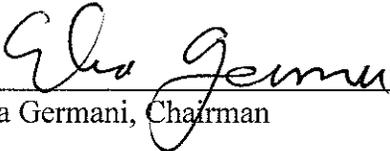
²⁸ Tr. 1/15/12 at 22.

2. The Tariffs filed by the City of Woonsocket Water Division on February 10, 2012 are hereby approved for bills rendered on and after February 1, 2012, being in compliance with the Commission Open Meeting Decision of February 1, 2012.
3. The City of Woonsocket, having filed with the Commission on December 22, 2011, an Ordinance prohibiting the Woonsocket Water Division from charging it for public fire protection has relieved itself of the obligation to pay public fire protection charges commencing December 22, 2011.
4. The City of Woonsocket Water Division shall collect the public fire protection charge from the City of Woonsocket for the period July 1, 2011 through December 21, 2011 by netting the Hydrant Fees it is owed by the City against the City Services it is required to pay to the City at the level allowed in Docket No. 3800 until such time as the hydrant fee receivable has been reduced to zero.
5. The City of Woonsocket Water Division shall comply with all findings and instructions contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO OPEN MEETING
DECISIONS ON FEBRUARY 1, 2012 AND APRIL 11, 2012. WRITTEN ORDER ISSUED
MAY 3, 2012.

PUBLIC UTILITIES COMMISSION




Elia Germani, Chairman


Mary E. Bray, Commissioner


Paul J. Roberti, Commissioner

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