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August 4, 2015

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

**Re: *Providence Water Supply Board***  
***Docket 4571***

Dear Ms. Massaro:

Enclosed please find an original and nine copies of the following document:

1. THE BRISTOL COUNTY WATER AUTHORITY'S MOTION TO COMPEL FURTHER RESPONSES TO DATA REQUESTS AND STRIKE OBJECTIONS AND SUPPORTING MEMORANDA.

Please note that an electronic copy of these documents has been provided to the service list.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf  
Enclosures  
cc: Service List (*via electronic mail*)

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

**IN RE: PROVIDENCE WATER SUPPLY BOARD:**

**DOCKET NO. 4571**

**MOTION TO COMPEL FURTHER RESPONSES TO DATA REQUESTS AND STRIKE  
OBJECTIONS**

Now comes the Bristol County Water Authority ("BCWA") and files this Motion to Compel Further Responses To Data Requests and Strike Objections. In support thereof, the BCWA states that the Providence Water Supply Board ("Providence Water") failed to produce, object to, or seek confidential protection of responsive documents sought in the BCWA's Data Requests 1-11, 1-14, 1-25 and 1-26. Providence Water also filed an objection to the production of documents sought in the BCWA's Data Requests 2-1, 2-2 and 2-9 based on provisions of the Rhode Island Open Meetings Act, RIGL §42-2-1, et. seq. that do not apply. In support thereof, the BCWA relies on the Memorandum of Law incorporated herein and attached hereto.

WHEREFORE, the Bristol County Water Authority prays that the Commission grant its Motion to Compel Further Responses To Data Requests and Strike Objections as requested hereinabove and all other relief the Commission deems meet and just.

The Bristol County Water Authority  
By its attorney,



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### CERTIFICATION

I hereby certify that on August 4, 2015, I sent a copy of the within to all parties set forth on the Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and regular mail.

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

**IN RE: PROVIDENCE WATER SUPPLY BOARD:**

**DOCKET NO. 4571**

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO  
DATA REQUESTS AND STRIKE OBJECTIONS**

**I. INTRODUCTION**

The Bristol County Water Authority (“BCWA”) filed a Motion to Compel Further Responses To Data Requests and Strike Objections in the above-captioned Docket. In support thereof, the BCWA relies on this Memorandum of Law.

**II. FACTS**

In the pending Docket, the Providence Water Supply Board (“Providence Water” or “Providence”) seeks \$2,450,000 of annual revenues to finance a \$30 million Central Operating Facility (“COF”) and miscellaneous projects not covered in its Infrastructure Replacement Plan. In its first set of data requests, the BCWA asked Providence about its exploration of other potential sites for the COF:

- a. In data request 1-11, the BCWA asked whether Providence had explored locating all employees and departments, except for T&D and heavy operations, at its Cranston facility and locating T&D at a smaller facility. As part of its request, the BCWA sought “all documents, including Board meeting minutes, related to Providence Water’s efforts and actions in exploring this issue.” (See Exhibit 1);
- b. In data request 1-14, the BCWA asked about Providence Water’s efforts and actions in exploring the “Gorham” property owned by the City of Providence that the 2009 CDM Phase II Facility Assessment Report identified as a potential location for the COF. As part of its request, the BCWA sought “all documents, including Board meeting minutes, related to Providence Water’s efforts and actions in exploring this site for a COF.” (See Exhibit 1);

- c. In data request, 1-25, the BCWA asked about Boyce Spinelli's testimony in Docket 4406 that the City of Providence had instructed Providence Water to "contain" its search for a COF property to the City of Providence. As part of its request, the BCWA sought "any documentation, including Board meeting minutes, in which this directive was memorialized or referenced." (See Exhibit 1); and,
- d. In data request 1-26, the BCWA asked about Boyce Spinelli's testimony in Docket 4406 that Providence Water had located a property Johnston, RI for the COF that had been rejected by the Providence Water Supply Board. As part of its request, the BCWA sought:
  - 1. Any and all documents related to this property, including, but not limited to those that identify the property, its price, and the costs necessary for its use as a COF.
  - 2. Any and all documents, including Board meeting minutes, that memorialize, evidence, document, or refer to Providence Water's rejection of this site. (See Exhibit 1)

Providence Water did not object to any of these requests. In responding, Providence Water identified various Executive Session Minutes of Board meetings as being responsive to these requests, but it did not produce these meeting minutes. Because of the compressed procedural schedule in this Docket, the BCWA did not initially file a motion seeking to compel the production of the meeting minutes that Providence identified, but did not produce. Rather, the BCWA filed a second set of data requests that specifically sought the production of the Executive Session Meeting minutes for August 16, 2006, February 21, 2007, August 12, 2009 and May 4, 2011 identified in Providence's responses (See BCWA 2-1, 2-2 and 2-9 included herein as Exhibit 2).

In its response to these requests, Providence lodged the identical objection:

“Prepared based on advice from counsel - Objection. These minutes were properly sealed pursuant to the Open Meetings Act. "Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure." *The Attorney General's Guide to Open Government in Rhode Island*, 24 (6th ed. 2012); *see also Gorman v. Tiogue Fire District*, PR 97-04. In addition, the Open Meetings Act (OMA) provides that every meeting of a public body shall be open, unless closed under one of several exceptions. One exception allows a closed meeting for " [a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." R.L.G.L. 42-46-5(a)(7). A separate exception to the OMA includes "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes ..." R.L.G.L. 42-46-5(a)(5); *see In re Rhode Island Council on the Arts*, ADV OM 00-04." (See Exhibit 2)

### **III. ARGUMENT**

Providence should be ordered to produce the documents sought for four reasons.

First, the documents requested in the BCWA's data requests 1-11, 1-14, 1-25 and 1-26 were not limited to meeting minutes. For instance, in BCWA 1-26 regarding the Johnston property that Providence rejected, the request sought "any and all documents related to this property, including, but not limited to those that identify the property, its price, and the costs necessary for its use as a COF." This request does not reference meeting minutes, yet Providence did not produce a single document in response.

Second, the meeting minutes Providence identified were originally sought in BCWA requests 1-11, 1-14, 1-25 and 1-26, and Providence did not object to these requests. Thus, Providence did not raise a timely objection the BCWA's requests for these meeting minutes pursuant to Commission Rule 1.18(c)(3), which requires that:

“Objection to a data request in whole or in part on the grounds that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as



practicable and in no event later than 10 days after service of the request.”

Third, even if the Commission does not order Providence to produce the meeting minutes based on the lack of a timely objection to requests 1-11, 1-14, 1-25 and 1-26, the grounds for sealing the meeting minutes referenced in Providence’s objection to requests 2-1, 2-2 and 2-9 no longer apply. Providence is correct that the Rhode Island Open Meetings Act allows for discussions in Executive Session related to “a matter related to the question of the investment of public funds where the *premature* disclosure would adversely affect the public interest”, and “any discussions or considerations related to the acquisition or lease of real property for public purposes...wherein *advanced* public information would be detrimental to the interest of the public.” (See R.I.G.L. 42-46-5(a)(5) and (7), emphasis added) However, the meeting minutes Providence identified in its data responses are from 2006, 2007, 2009 and 2011, and pertain to property that Providence is *not* going to use for a COF. Providence cannot claim that these exceptions still apply.

Fourth, even assuming Providence has a valid claim for protecting the meeting minutes under the Rhode Island Open Meetings Act or Access To Public Records Act (“APRA”), it did not follow the process for seeking this protection. Commission Rules 1.2(g) and 1.18(e) set up clear procedures for a party to provide relevant confidential information protected under the APRA, but Providence did not follow this procedure. Rather, Providence seeks to keep this information secret while at the same time requesting \$2,450,000 *annually* for a \$30 million COF.

As such, the BCWA requests that the Commission compel Providence to produce all documents responsive to BCWA 1-11, 1-14, 1-25 and 1-26, including *all* meeting minutes, and strike Providence's objection to BCWA 2-1, 2-2 and 2-9.

#### **IV. CONCLUSION**

For the reasons set forth herein, the Bristol County Water Authority prays that the Commission grant its Motion to Compel Further Responses To Data Requests and Strike Objections as requested hereinabove and all other relief the Commission deems meet and just.

The Bristol County Water Authority  
By its attorney,



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(401) 724-3600

### CERTIFICATION

I hereby certify that on August 4, 2015, I sent a copy of the within to all parties set forth on the Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and regular mail.

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***EXHIBIT 1***

PROVIDENCE WATER SUPPLY BOARD

Docket No.

Data Requests of the  
Bristol County Water Authority- Set I  
July 2, 2015

**BCWA 1-11:** The CDM August 2009 Phase II Report indicated that Providence Water could separate its administrative and other office functions from its heavy operations (i.e. field operations, T&D, vehicle maintenance, meter service and storage), and that the Cranston site could be expanded:

- a. Please describe whether Providence Water explored locating all employees and departments, except for T&D and heavy operations, at the Cranston site and locating T&D at a smaller facility.
- b. Please provide a detailed description of Providence Water's efforts in exploring this issue.
- c. Provide all documents, including Board meeting minutes, related to Providence Water's efforts and actions in exploring this issue.
- d. Please state why all non-T&D employees and heavy operations cannot be located at an expanded facility at the Cranston site.
- e. Please provide any and all cost estimates related to the expansion of the Cranston site to accommodate Providence Water's employees and operations with the exception of T&D employees and heavy operations.
- f. Please provide any and all cost estimates related to the expansion of the Cranston site to accommodate all of Providence Water's operations and employees including T&D employees and heavy operations.

- Response:**
- a. As part of the response to BCWA 4-4, Providence Water provided detailed cost estimates for the construction of a combined facility and separate facilities.
  - b. See response to (a).
  - c. Discussion of exploring this issue took place in Executive Session on August 16, 2006. In addition, meeting minutes from the November 17, 2010 are attached.
  - d. All "non-T&D employees and heavy operations" can be located at an expanded facility at the Cranston site, however, as stated in Exhibit GG-2, it has always been Providence Water's preference to have the all functions (exclusive of the treatment plant staff) in one facility.
  - e. See response to (a).
  - f. See response to (a).

PROVIDENCE WATER SUPPLY BOARD  
Docket No.

Data Requests of the  
Bristol County Water Authority- Set I  
July 2, 2015

**BCWA 1-14:** The 2009 CDM Phase II Report identified the Gorham site as property owned by the City of Providence as a potential location for the COF.

- a. Please describe all of Providence Water's efforts and actions in exploring this site for a COF.
- b. Please provide a detailed description of Providence Water's efforts and actions in exploring this site for a COF.
- c. Provide all documents, including Board meeting minutes, related to Providence Water's efforts and actions in exploring this site for a COF.
- d. Please state why a COF cannot be located at this site.

**Response:**

- a. Providence Water's efforts and actions are summarized in the 2009 CDM Phase II Report. In addition, Providence Water had informal discussions with RIDEM and Hayes and Sherry which are attached.
- b. See response to (a)
- c. Discussion of exploring this issue took place in Executive Session on August 12, 2009. In addition, meeting minutes from the November 17, 2010 are attached to the response to BCWA 1-11.
- d. The Gorham site is not a preferable location for a COF due to the environmental concerns and potential purchasing issues.



PROVIDENCE WATER SUPPLY BOARD

Docket No.

Data Requests of the  
Bristol County Water Authority- Set 1  
July 2, 2015

**BCWA 1-25:** At the November 13, 2013 hearing in Docket 4406, Boyce Spinelli testified that the City of Providence had instructed Providence Water to "contain" its search for a COF property to the City of Providence (See p. 151-153):

- a. Provide any documentation, including Board meeting minutes, in which this directive was memorialized or referenced.
- b. Please fully explain why the City of Providence directed Providence Water to contain its search to the City of Providence.
- c. Please state under what authority Providence Water was bound to follow this directive.

**Response:** a. Providence Water does not have any public documents or Board meeting minutes referencing a directive to contain our search in the City of Providence. Discussions took place in Executive Session on the following dates: 5/4/11, 2/21/07 and 8/16/06.

b. Providence Water has been searching for a new facility for the past seven years. Past administrations may have required the search to remain in Providence. The current administration has not required Providence Water to confine our search in the City of Providence.

c. Providence Water would not be obligated to follow any such directive. However, we are under the authority to follow policies set forth by our Board.

PROVIDENCE WATER SUPPLY BOARD

Docket No.

Data Requests of the  
Bristol County Water Authority- Set 1  
July 2, 2015

**BCWA 1-26:** At the November 13, 2013 hearing in Docket 4406, Boyce Spinelli testified that Providence Water had located a property in Johnston for the COF that had been rejected by the Providence Water Supply Board (See p. 151-153):

- a. Please provide any and all documents related to this property, including, but not limited to those that identify the property, its price, and the costs necessary for its use as a COF.
- b. Please provide any and all documents, including Board meeting minutes, that memorialize, evidence, document, or refer to Providence Water's rejection of this site.
- c. Please provide any and all documents that memorialize, evidence, document or refer to any directive from the City of Providence directing or referring to the rejection of this site.

**Response:**

- a. Providence Water does not have any public documents or Board meeting minutes related the site in the Town of Johnston. Discussions took place in Executive Session pertaining to this site on 5/4/11.
- b. Providence Water does not have any public documents or Board meeting minutes referencing a rejection of a site in the Town of Johnston. Discussions took place in Executive Session pertaining to this site on 5/4/11.
- c. Providence Water does not have any documents or evidence referring to a directive from the City of Providence rejecting the Johnston site.

***EXHIBIT 2***

PROVIDENCE WATER SUPPLY BOARD  
Docket No. 4571

Data Requests of the  
Bristol County Water Authority- Set 2  
July 15, 2015

**BCWA 2-1:** With respect to Providence's response to BCWA 1-11, please provide the Executive Session minutes dated August 16, 2006 referenced in the response.

**RESPONSE:**

Prepared based on advice from counsel - Objection. These minutes were properly sealed pursuant to the Open Meetings Act. "Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure." *The Attorney General's Guide to Open Government in Rhode Island*, 24 (6th ed. 2012); *see also Gorman v. Tiogue Fire District*, PR 97-04. In addition, the Open Meetings Act (OMA) provides that every meeting of a public body shall be open, unless closed under one of several exceptions. One exception allows a closed meeting for "[a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." R.I.G.L. 42-46-5(a)(7). A separate exception to the OMA includes "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes...." R.I.G.L. 42-46-5(a)(5); *see In re Rhode Island Council on the Arts*, ADV OM 00-04.

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**BCWA 2-2:** With respect to Providence's response to BCWA 1-14, please provide the Executive Session minutes dated August 12, 2009 referenced in the response.

**RESPONSE:**

Prepared based on advice from counsel - Objection. These minutes were properly sealed pursuant to the Open Meetings Act. "Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure." *The Attorney General's Guide to Open Government in Rhode Island*, 24 (6th ed. 2012); *see also Gorman v. Tiogue Fire District*, PR 97-04. In addition, the Open Meetings Act (OMA) provides that every meeting of a public body shall be open, unless closed under one of several exceptions. One exception allows a closed meeting for "[a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." R.I.G.L. 42-46-5(a)(7). A separate exception to the OMA includes "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes...." R.I.G.L. 42-46-5(a)(5); *see In re Rhode Island Council on the Arts*, ADV OM 00-04.

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**BCWA 2-9:** With respect to Providence's response to BCWA 1-25 and 1-26, please provide the Executive Session minutes dated May 4, 2011, February 21, 2007 and August 16, 2006 referenced in the responses.

**RESPONSE:**

Prepared based on advice from counsel - Objection. These minutes were properly sealed pursuant to the Open Meetings Act. "Minutes of an executive session meeting sealed pursuant to the Open Meetings Act are exempt from public disclosure." *The Attorney General's Guide to Open Government in Rhode Island*, 24 (6th ed. 2012); *see also Gorman v. Tiogue Fire District*, PR 97-04. In addition, the Open Meetings Act (OMA) provides that every meeting of a public body shall be open, unless closed under one of several exceptions. One exception allows a closed meeting for "[a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest." R.I.G.L. 42-46-5(a)(7). A separate exception to the OMA includes "[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes...." R.I.G.L. 42-46-5(a)(5); *see In re Rhode Island Council on the Arts*, ADV OM 00-04.