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August 14, 2015

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

Re: Providence Water Supply Board – Docket No. 4571

Dear Luly:

Enclosed for filing are an original and nine copies of Providence Water Supply Board's Objection to Bristol County Water Authority's Motion to Compel Further Responses to Data Requests and Strike Objections and Supporting Memorandum.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc:tmg

cc: Service List
Ricky Caruolo
Peter Pallozzi
Thomas Massaro

**Docket No. 4571 - Providence Water Supply Board – Abbreviated Rate Filing
Service List updated 7/21/15**

***Requested to receive hard copy of all pleadings**

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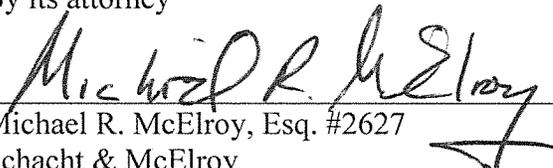
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD : DOCKET No. 4571
APPLICATION TO CHANGE RATE SCHEDULES :

**OBJECTION TO BRISTOL COUNTY WATER AUTHORITY'S
MOTION TO COMPEL FURTHER RESPONSES TO DATA REQUESTS
AND TO STRIKE OBJECTIONS**

Providence Water Supply Board ("Providence Water") hereby objects to Bristol County Water Authority's ("BCWA") Motion to Compel Further Responses to Data Requests and to Strike Objections. Specifically, Providence Water objects to BCWA's Motion to Compel because the documents sought are protected from disclosure by the Access to Public Records Act, R.I.G.L. § 38-2-1 *et seq.* The arguments and supporting authorities for this Objection are set forth in the accompanying Memorandum of Law.

Respectfully submitted,
PROVIDENCE WATER SUPPLY BOARD
By its attorney


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Dated: August 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2015, I sent a true copy of the foregoing to the attached service list.



Michael R. McElroy, Esq.

PWSB Objection to BCWA's Motion to Compel

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD : DOCKET No. 4571
APPLICATION TO CHANGE RATE SCHEDULES :

**MEMORANDUM IN SUPPORT OF PROVIDENCE WATER SUPPLY BOARD'S
OBJECTION TO BRISTOL COUNTY WATER AUTHORITY'S
MOTION TO COMPEL FURTHER RESPONSES TO DATA REQUESTS
AND TO STRIKE OBJECTIONS**

Providence Water Supply Board ("Providence Water") respectfully submits this Memorandum in Support of its Objection to Bristol County Water Authority's (BCWA) Motion to Compel Further Responses to Data Requests and to Strike Objections.

I. BACKGROUND AND FACTS

On July 2, 2015, BCWA propounded 29 data requests (78 including subparts) on Providence Water in this docket. Providence Water fully and properly responded to these requests on July 9, 2015. Within these responses, Providence Water provided all responsive public documents, including minutes for open Board meetings. The document production was so voluminous that it could not be provided via email, but instead a portion of the production was provided on a set of CD-ROMs. Providence Water identified, but did not produce, privileged Executive Session Board minutes related to the decision regarding the potential acquisition of a new Central Operating Facility ("COF"), because these minutes were sealed by vote of the Board pursuant to the Open Meetings Act ("OMA"). R.I.G.L. § 42-46-1 *et seq.*

On July 15, 2015, BCWA submitted an additional 13 data requests (32 including subparts). Providence Water promptly responded to this second set of data requests on July 22,

2015. The responses to the second data set contained all requested information, with the exception of the above-mentioned minutes from Executive Sessions of the Board.¹

On August 4, 2015, BCWA filed a Motion to Compel. BCWA argues that Providence Water should be required to produce the sealed minutes from four (4) Executive Sessions of the Board which discussed the potential new COF and were identified in Providence Water's data responses.

Providence Water respectfully objects to the Motion, which seeks properly sealed Executive Session minutes that are exempt from disclosure.

II. ARGUMENT

Providence Water takes seriously the Commission's preference for prompt and complete disclosure and exchange of information amongst the parties. Commission Rule 1.18(a)(1). Providence Water has been forthcoming with all parties, including BCWA, throughout the discovery process.

Rule 1.2(g)(1) makes it clear that "Any claim of privilege shall be governed by the policy underlying the Access to Public Records Act..." R.I.G.C. § 38-2-1 *et seq.* Under the Access to Public Records Act ("APRA"), it was entirely proper for Providence Water to disclose the

¹ Providence Water objected to providing Executing Session minutes stating "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."

existence of these privileged minutes without producing them.² “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.

BCWA concedes that the OMA allows for discussions in executive session when “[a] matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest”³ or when “[a]ny 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.”⁴ *See In re Rhode Island Council on the Arts*, ADV OM 00-04; *see BCWA Motion* at 4.

The APRA protects these properly sealed minutes from disclosure.⁵ If the Commission orders Providence Water to produce these documents, it would create a harmful precedent for all public bodies in Rhode Island. If an administrative agency could order the production of properly sealed Executive Session minutes, these statutory exceptions to the OMA would serve no purpose.

BCWA argues that the grounds upon which the Board originally closed the meeting and sealed the minutes are no longer applicable, and therefore the exceptions to OMA should no

² For example, BCWA 1-25, subpart (a) states “Provide any documentation, including Board meeting minutes, in which this directive was memorialized or referenced.” In response, Providence Water stated “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.”

³ R.I.G.L. 38-2-2(4)(I) and 42-46-5(a)(5).

⁴ R.I.G.L. 38-2-2(4)(N) and 42-46-5(a)(7).

⁵ R.I.G.L. 38-2-2(4)(I) exempts from disclosure “[r]eports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into” and R.I.G.L. 38-2-2(4)(N) exempts from disclosure “contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned...”.

longer apply. BCWA argues that the minutes were from prior years and regarding properties that Providence is not going to use for a COF. This argument fails for several reasons.

First, the OMA does not place time limits on properly sealed Executive Session minutes.

Second, until Providence Water receives all required approvals and closes on the transaction, the purchase of the property is not final. If the purchase agreement dissolves for any reason, Providence Water will need to begin its search anew, and previous potential sites would likely be part of that equation.

Third, data requests must be reasonably relevant to the proceeding. Commission Rule 1.18(c)(1). If the Executive Session minutes at issue are irrelevant to the current purchase, as BCWA suggests, then the request is irrelevant and improper under the Commission Rules.

Fourth, neither the General Manager nor legal counsel for Providence Water may release sealed Executive Session minutes of their own accord, even if ordered to do so by the Commission. Once Executive Session minutes are properly sealed by the Board, only the Board may unseal them. To do so would require a noticed meeting of the Board at which the issue is discussed, followed by a vote to determine whether to unseal the minutes.

III. CONCLUSION

Providence Water respectfully requests that BCWA's Motion to Compel be denied for the reasons set forth herein.

Dated: August 14, 2015

Respectfully submitted,
PROVIDENCE WATER SUPPLY BOARD
By its attorney



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PWSB/Memorandum in Support of Objection to BCWA's Motion to Compel