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September 12, 2016

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

Re: *City of Newport, Utilities Department, Water Division*
Docket 4595

Dear Ms. Massaro:

Enclosed please find an original and nine (9) copies of the following documents:

1. Memorandum in Support of Newport Water's Proposed Changes in Rates.

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

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf

Enclosure

cc: Docket 4595 Service List (*via electronic mail*)

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

IN RE: CITY OF NEWPORT, UTILITIES DIVISION, WATER DEPARTMENT

DOCKET NO: 4595

MEMORANDUM IN SUPPORT OF NEWPORT WATER'S PROPOSED CHANGES IN RATES

SEPTEMBER 12, 2016

I. INTRODUCTION

“Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means. The parties to it understand it least, but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming to a total disagreement as to all the premises.” Charles Dickens, *Bleak House*

Charles Dickens’ classic novel *Bleak House* revolves around the case of *Jarndyce v. Jarndyce*, a chancery suit concerning the fate of a large inheritance that drags on for so many generations that legal costs consume the entire estate. *Jarndyce v. Jarndyce* has become a byword and metaphor for pointless and seemingly interminable litigation.

The litigation in this Docket – especially over the issue of demand factors – has its own Dickensian quality. Too much time, effort and rate case costs (ultimately borne by the customers) has been devoted to the issue of “proper” demand factors. The Portsmouth Water and Fire District (“Portsmouth”) complains that Newport should use demand factors developed in 2011 and 2012 from a sample of customers, rather than factors developed in 2015 from Newport’s entire customer class. The unfortunate irony regarding Portsmouth’s complaint is two-fold: (1) The 2015 demand factors result in a lower increase to Portsmouth; and, (2) the rates Newport proposes do not result from strictly applying either the 2011/2012 or 2015 demand factors because of the use of “gradualism,” to which Portsmouth does not object. Thus, Newport provides its final chapter in this saga and addresses Portsmouth’s “demand factors” grievances, and three other issues it pressed at the hearings in this Docket.

II. DISPUTED ISSUES

On the first day of hearings, Newport presented a revised position after accepting certain recommendations made by the Division of Public Utilities and Carriers (“Division”) and Interveners in their surrebuttal testimonies:

1. Newport agreed to use the original request for City Services in Laura Sitrin's direct testimony (\$477,843), rather than the rebuttal request (\$541,743).
2. Newport agreed to a two-and-a-half year amortization of the final rate case costs.
3. Newport agreed with the Division's proposal for gradualism by leaving the Retail Volume charges flat with no increase, and no decrease.
4. Newport agreed that it would not increase the annual contribution of \$2.5 million dollars to the Restricted Capital Account, consistent with Portsmouth's recommendation.
5. Portsmouth agreed to use Newport's value for services in this Docket, and Newport agreed to an independent valuation of its service lines with a cap of fifteen thousand dollars (\$15,000) for the valuation.
6. Portsmouth recommended a \$225,000 reduction in revenues for Chemical (\$125,000) and Electric Expenses (\$100,000). Newport disagreed, but proposed to withdraw \$225,000 annually from the Operating Revenue Reserve restricted account to offset the rates required for Electricity and Chemicals.¹

Newport memorialized these changes in Exhibit 8, column C. Newport's final position in this Docket, which incorporates the Division's recommendations in its response to the Commission's hearing record request 2 and 3, is attached to this brief as Exhibit A.²

When the hearings began, Portsmouth was the only party with continuing objections:

1. Portsmouth continued to request a funding reduction for Electric and Chemicals even though its own expert agreed with Julia Forgue that "Newport Water's new treatment facilities have not been in operation for very long, and, therefore Newport Water has not had sufficient time to analyze" chemical and electric use those facilities. (Woodcock Direct, p.6-7)

¹ As examined herein below, Newport withdrew its proposal to use \$225,000 from the Operating Revenue Reserve to offset the rate increase. Rather, Newport agrees with the Division's recommendation in its response to Hearing Record Requests 2 and 3 (Commission Exhibit 8) that Newport eliminate \$59,000 in funding for accrued benefits; reduce funding for the Operating Reserve from 3% to 1.5% of operations and maintenance expenses; and, reduce funding for retiree insurance by \$40,000. These recommendations decrease Newport's revenue request by approximately \$240,000. (Tr. VIII, p.21, ll.1-5)

² Column A shows Newport's position at the hearing, as set forth in Column C of Newport Exhibit 8. Column B shows Newport's revised position accepting the Division's recommendations in its response to Commission Hearing Record Request 2 and 3 without applying gradualism. Column B shows the application of gradualism to the rates in Column B (i.e. keeping the retail rates flat and reducing the wholesale, public fire and private fire rates).

2. Portsmouth argued that Newport's City Service Request "unfairly" increased costs to ratepayers even though Mr. Woodcock made numerous mistakes in his calculation of the "appropriate" City Service allowance, and Newport only increased the amount the Commission approved in 2011 by \$24,290.
3. Portsmouth argued – *at length* – that Newport used "less sophisticated" demand factors even though the proposed rates do not depend on the demand factors due to the application of "gradualism" (a rate setting principal Portsmouth does not object to, and which Mr. Woodcock used in other Dockets); and, Newport's demand factors result in lower rates for Portsmouth than its demand factors.
4. Portsmouth sought to change the allocation of treatment plant capital costs (to benefit Portsmouth) even though this would alter the Cost of Service Model approved by the Commission in Docket 4128, which Mr. Woodcock criticized Newport for on several occasions.

This memorandum addresses these areas of disagreement.

III. LEGAL STANDARD

A public utility proposing a rate increase has the burden of proving that the increase is fair and reasonable. In its review, the Commission is not restricted to a specific methodology in making this determination. "It is settled that, when reviewing the commission's decisions, our concern is not with the method used to attain a particular result, but with the fairness and reasonableness of the end result itself." *Narragansett Electric Company v. Harsch*, 368 A.2d 1194 (R.I. 1977) "It is within the province of the commission to determine the type of information a utility must supply to set specific rates." *New England Telephone and Telegraph Co.*, 446 A.2d at 1385 (R.I. 1982) "No particular formula binds the commission in formulating its rate decision; the sole requirement is that the ultimate rate be fair and reasonable." *Bristol County Water Co. v. Harsch*, 386 A.2d 1103 (R.I. 1978) "The rate that the commission approves, furthermore, carries a presumption of reasonableness that remains until the contrary is proven." *Id.* Newport Water met its burden in this Docket by proposing fair and reasonable rates, and Portsmouth has not proven the contrary. Thus, Newport requests the Commission grant the rates it proposes.

IV. ARGUMENT

The trier of fact may examine the credibility of the expert witnesses when expert testimony conflicts. *Lariviere v. Dayton Safety Ladder Co.*, 525, A.2d 892 (R.I. 1987) If the reasons given in support of an expert's opinion are not sound or complete, or if they are outweighed by other evidence, the opinion may be disregarded entirely. *Kyle v. Pawtucket Redevelopment Agency*, 262 A.2d 636 (R.I. 1970). Newport Water urges the Commission to closely examine Portsmouth's testimony as it was contradictory, careless, and in many instances, demonstrably wrong.

1. REVENUE REQUIREMENT

A. Restricted Chemical and Electric Accounts

Portsmouth requests that the Commission reduce funding for Newport's chemical expenses by \$125,000, and electric expenses by \$100,000, which reduces Newport's rate year revenue request by \$225,000. Portsmouth did not suggest that Newport doesn't need the amounts requested for chemicals and electricity. Rather, it argued that Newport could use the balance in these restricted accounts to make up for the funding cut. Yet, Portsmouth provided conflicting and incorrect testimony to support its position.

Portsmouth did accurately explain the nature of Newport's restricted accounts:

"The purpose of the restricted reserve accounts is to ensure that Newport Water has sufficient funds for its operations and capital programs. Sometimes it is difficult to determine or estimate future costs. To both prevent revenue shortfalls and ensure that allowed revenues are used only for intended purposes, the Commission ordered Newport Water to set up and fund restricted accounts that can only be accessed for specific purposes." (Woodcock Direct, p. 5, ll. 23-26, p. 6, l. 1)

Portsmouth also acknowledged that Newport didn't have enough experience operating its new water treatment facilities to accurately estimate annual operating costs:

“Newport Water’s new treatment facilities have not been in operation for very long, and, therefore Newport Water has not had sufficient time to analyze chemical use and costs at those facilities. Maintaining a restricted account for chemicals until Newport Water’s next rate case, therefore, is prudent to permit Newport Water the time necessary to perform sufficient analysis to be able to forecast chemical use and costs at these facilities accurately. In connection with Newport Water’s next rate case, the Commission can review Newport Water’s actual costs and make necessary adjustments to the amounts that are restricted, taking into account the change out of carbon.” (Woodcock Direct, p.6, ll.24-25, p.7, ll.1-6)

“Because the change-out of carbon may be required at unknown times and costs, a specific carbon change out fund could be established or it could be included in the current restricted chemical fund.” (Woodcock Direct, p. 7, footnote 1)

Ms. Forgue agreed with Mr. Woodcock on this point, and noted that Newport had only operated the new treatment facilities for one full summer. (Forgue Rebuttal, pp.5-8) Referencing Mr. Woodcock’s testimony cited above, Ms. Forgue stated “Newport agrees with this assessment and does not believe the restricted account balance should be used to meet ongoing chemical expense until Newport can accurately forecast chemical expenses based on a more sizable data sample.” (Forgue Rebuttal, p.6, ll.26-29)

In his surrebuttal, Mr. Woodcock was asked if he agreed with “Ms. Forgue’s rationale for maintaining the balance in the restricted chemical account and he answered “No.” (Woodcock Surrebuttal, p.6., ll.20-21). This testimony is farcical. Ms. Forgue’s rationale was the *same* rationale espoused by Mr. Woodcock in his direct testimony. So, Mr. Woodcock executed a complete 180 degree turn in his surrebuttal:

“These “new” facilities, however have now been in operation for nearly two years...The uncertainty associated with the costs of operating those plants no longer exists or at least has diminished considerably. Newport Water should be required to examine that history to make a fair and accurate forecast of the costs of operation” (Woodcock Surrebuttal, p. 5, ll. 11-12, p. 6, l. 25)

On cross-examination, Newport’s counsel asked Mr. Woodcock why he used quotations around the word “new.” He responded: “They’re not new. I put it in quotes because I suppose there’s probably

different interpretations of what new is.” (Tr. VIII, p.51, ll.1-4)³ Yet, Mr. Woodcock did not know when Newport’s plants went into operation:

“Q. And when did the Station 1 plant go into full scale operation?”

A. I think Station 1 - I probably have them mixed up. One of them is nearly two years. The other I believe is closer to 18 months. I'm drawing a blank. I'm now confusing which one was completed earlier. I think Lawton Valley may have been done a little earlier. “ (Tr. VIII, p.51, l.23 to p.52, l. 7)

Mr. Woodcock also believed that Newport had operated both plants for two full summers. (Tr. VIII, p.52, ll.11-24). He was wrong. Station 1 went into full scale operation first on July 31, 2014, and Lawton Valley second on September 17, 2014. (Forgue Direct, p.5, ll.1-3) Thus, 2015 was the only full summer Newport operated both plants. In any event, Newport suggests that water treatment plants less than two years old, which have only been operated for one full summer, qualify as “new.”

Mr. Woodcock testified that Newport could afford the \$125,000 cut in chemical expense funding because “Newport Water has more than \$300,000 in its restricted chemical account...”, which “will still leave more than \$175,000 in the restricted chemical accounts.” (Woodcock Direct, p.6, ll.13-20) He also testified that Newport could use “\$300,000 from the operating revenue allowance to pay for unanticipated chemical costs.” (Woodcock Surrebuttal p.7, l.20) On cross-examination, Mr. Woodcock admitted that both statements were untrue. He conceded that Newport only had \$156,043 in its chemical account as of June 30, 2016, and only had approximately \$150,000 in its operating revenue allowance to pay for unexpected expenses, including, but not limited to, chemicals. (Tr. VIII, p.48, ll.1-13, p.53, ll.13-19)

Mr. Woodcock provided similar testimony to support his suggested cut in electric expense funding. He maintained that Newport’s “nearly two-year history of operation of the “new” water treatment

³ Citations to the Hearing Transcript are noted as Tr. V (volume numbers I, II, and III correspond to the days of hearing).

plants provides the necessary data to forecast the costs of operating those plants, including electricity costs.” (Woodcock Rebuttal, p. 8, ll. 14-16) He also included completely unsubstantiated and incorrect testimony regarding the history of Newport’s restricted electric account:

Q: Why does Newport Water have a restricted electricity account?

A: The Commission initially approved the creation of the restricted electricity account in Docket 3578 (in 2004) to guard against the high costs of pumping raw water supply from Newport Water’s off-island water sources and the uncertainties surrounding that need because of water quality issues with on-Island supplies. The new treatment facilities have eliminated some of those water quality concerns, and water sales have dropped since the restricted account was first established more than a decade ago. Thus, the unusual circumstances that led to the creation of the restricted electricity account have dissipated. (Woodcock Rebuttal, p.9, ll.1-8)

Mr. Woodcock did not cite any specific page of the Docket 3578 Order to support this assertion.

Thus, under cross-examination, Mr. Woodcock was asked to point out the section of the Order where the Commission approved the creation of the restricted electricity account “to guard against the high costs of pumping raw water supply from Newport Water’s off-island water sources and the uncertainties surrounding that need because of water quality issues with on-Island supplies.” Mr.

Woodcock replied:

“My testimony was that the Commission approved the creation of the account in Docket 3578. I believe I read where that was in the order that they created the account. I did not say that the order talked about guarding against the pumping cost. I think if it's not explicitly in here, we'd have to look through the transcript and all the testimony in that docket to find that, but I have no doubt in my mind that that was created because of the need for the off island pumping. It may not be explicitly in the order, but I am certain that it's either in the testimony of the various witnesses or in the transcripts of it, and to verify that for Mr. Keough, if it's not explicitly herein the order...” (Tr. VIII, p.60, ll.7-24)

This response is illuminating for. First, although Mr. Woodcock tried to disavow his pre-filed written testimony, he most certainly did testify that “the order talked about guarding against pumping costs.” Second, Mr. Woodcock substituted his own belief, certainty, and lack of doubt about the Commission’s findings for the actual order language. This is completely unacceptable. Witnesses who submit sworn

pre-filed written testimony have a responsibility to fact-check something as verifiable as the wording of a Commission Order. For a witness to casually claim he “believed” he read something in a Commission Order without confirming it is sloppy at best. Furthermore, an experienced witness such as Mr. Woodcock knows the Commission speaks through its Orders. To claim that something “not explicitly in the order” is the reason the Commission established the restricted electric account is both cavalier and careless.

As referenced above, Newport did not object to reducing its overall revenue request by \$225,000 as Portsmouth requested. Newport merely objected to using funds from the restricted balances in the chemical and electric accounts to cover the funding reduction because of its lack of experience in operating the new plants.⁴ Newport sought to use funds from the restricted Operating Revenue Reserve to cover the \$225,000 reduction to chemical and electric funding. However, Newport withdraws this request in light of the Division’s response to the Commission’s Hearing Record Requests regarding Newport’s restricted account balances.

The Division made four recommendations regarding Newport’s restricted accounts:

1. Eliminate \$59,000 in funding for accrued benefits, and have Newport use the balance in this account for ongoing expenses;
2. Reduce funding for retiree insurance by \$40,000;
3. Transfer approximately \$300,000 from the accrued benefits account to the restricted Operating Revenue Reserve to achieve full funding at 6% of revenues, and eliminate ongoing funding for the 1.5% restricted portion of this account. The balance in the account would still be restricted, and Newport could make a recommendation in the next rate case for their use; and,
4. Allow the full amount of funding Newport requested for electric and chemicals.

⁴ This lack of experience was further illustrated in Newport’s response to the Commission’s Hearing Record Request 1. Newport noted that it developed its original chemical expense forecast of \$761,782 in the fall of 2015 when it prepared its rate filing. Newport updated this forecast to \$809,858 on July 29, 2016 in response to the record request.

Newport agrees with these recommendations, which reduces Newport's revenue request by approximately \$240,000.

B. City Services

Portsmouth claims that City Service expenses have been "hotly contested" in prior Dockets. (Woodcock Direct, p.12, l.9) This is only partially true. Portsmouth did vehemently oppose the City Service expenses that resulted from Newport's creation of a "City Services Cost Allocation Model" in 2008 for Docket 4025. However, Newport's three subsequent Dockets (4128, 4243 and 4355) were resolved by Settlement Agreements that included Portsmouth. Thus, City Services expenses have not been contested since 2008.

In this Docket, Newport submitted a revised City Services Cost Allocation Manual to reflect current circumstances within the City of Newport (e.g. inclusion of OPEB, removal of the Library from the City's Budget, elimination of Tax Assessor Expenses, etc.) (Sitrin Direct, pp.4-7, Newport Response to PWFD 2-9). Newport believed it was inappropriate to continue using the 2008 Cost Allocation Manual because conditions had changed. (Tr. VII, p.35-39) Obviously, Portsmouth viewed Newport's revision as an opportunity to "hotly" contest this issue once again. Portsmouth's dispute of these expenses confirms the adage that "no good deed goes unpunished." Had Newport simply used the allocations the Commission previously approved, its City Service expense would have been considerably higher.

The City of Newport revised the City Services Cost Allocation Manual in 2014, and consistent with past Dockets, used the Fiscal Year 2015 budgets for the general fund and enterprise funds to calculate the City Service request of \$477,843. (See Newport Response to PWFD 2-7 and Sitrin Direct, Exhibits 1 and 2). In his direct testimony, Mr. Woodcock complained that Newport updated the Cost Allocation Manual:

“... Portsmouth, Newport Water, and the other parties in interest to Newport Water’s rate filings had, among other things...obtained Commission approval for Newport Water’s cost allocation manual (for City Services) Because of these past efforts, Portsmouth hoped and expected that this rate filing would not result in continued disagreements about previously resolved issues regarding matters such as... city service expenses.”

“It is fundamentally unfair to Portsmouth to continually have to re-analyze Newport Water’s allocation of City Service expenses because it has chosen to unilaterally update the cost allocation manual or to change the basis for allocations...This causes Portsmouth, the Division, and the Commission to re-litigate these issues in every rate case, resulting in further increased costs to the ratepayers in Newport, Middletown and Portsmouth because of the expenses of that litigation.” (Woodcock Direct, p. 3, ll. 24-26, p.4, ll. 1-5, p. 14, ll. 15-22)

Thus, “to avoid any further disagreements and litigation over this issue,” Newport proposed to revert to “the allocations the Commission previously approved in Docket 4025, as revised by the parties in the Docket 4243 Settlement Agreement.” (Sitrin Rebuttal, p.5, ll.26-27) This resulted in a \$63,910 increase over the amount Newport originally sought (from \$477,843 to \$541,753). Confronted with this reality, Portsmouth changed direction. In his surrebuttal testimony, Mr. Woodcock argued that the Commission should *not* apply the previously approved City Service allocations because the prior allocations were no longer valid based on change circumstance. (Woodcock Surrebuttal, pp.15-16).

Mr. Woodcock also testified that the updated City Services Cost Allocation Manual included adjustments that “unfairly increase the costs to the rate payers” even though the new allocations resulted in a modest increase of \$25,000 over the amount the Commission approved in the Docket 4243 and 4355 Settlement Agreements. (Woodcock Direct p.12, l.18) This overall increase included a \$31,000 decrease in Legal and Administrative Expenses, and a \$56,000 increase in Data Processing (MIS) expenses. As Ms. Sitrin explained, the MIS increase primarily resulted from the installation of new Voice Over Internet Protocol (“VOIP”) phone system, and the inability to “disaggregate” the VOIP System from computer infrastructure because it is “tied into” the City’s computer system. (Sitrin Direct

p.6-7, Tr. VII, pp.42-43, pp. 80-82) On cross-examination, Newport's counsel asked Mr. Woodcock how the adjustments could be unreasonable, when they only resulted in a total increase of \$25,000:

Q. You didn't take a look at how much Newport's proposal in this case had increased over the amounts used in Dockets 4243 and 4355?

A. Not at all. It was totally irrelevant to anything I was doing. It had no bearing whatsoever on what the proper costs were.

Q. Well, going back to your testimony on Page 12 of your direct, I just want to make sure that I read your testimony correct. On Page 12, Line 16 you testified, "A number of the adjustments that Newport has made are contrary to what was decided by the Commission and unfairly increase the costs to the ratepayers." Did I read that correctly?

A. You did. I'm talking about adjustments in methodology, just to be clear. They're not in dollars. (Tr. VIII, p.70, ll.3-17)

Mr. Woodcock's claim that his pre-filed testimony about unfair increases in "the costs to ratepayers" referred to methodology adjustments rather than "dollars" is dubious at best considering he suggested a radical decrease in "dollars" for City Services.⁵ Perhaps he sought to distance himself from his pre-filed testimony because it was deeply flawed.

Mr. Woodcock began his live testimony by correcting six errors in his proposed City Service Expense of \$297,295.

1. Mr. Woodcock used an incorrect number for the General Fund when calculating the allocation percentages based on Newport Water's budget compared to the combined total budgets of the General Fund and Enterprise Funds.⁶ (Tr. VIII, p.31, ll.1-20)
2. He did not subtract all the debt and capital expenses from the General Fund when calculating the allocation based on budget comparisons as required by the Docket 4243 and 4355 Settlement Agreements. (Tr. VIII, p.31, ll.21-24, p.32, ll. 1-19)

⁵ Mr. Woodcock's original position on City Service set forth on page 46 of his Direct Testimony Schedules would have represented a \$156,258 *decrease* from the \$453,553 of City Expense allowance Portsmouth agreed to in the Docket 4243 and 4355 Settlement Agreements.

⁶ The allocation of City Service Expenses based on budget calculations affects the costs for the City Manager, the City Solicitor, Finance Administration, and MIS.

3. In his original calculation of budget comparisons, Mr. Woodcock removed depreciation expenses from the Water Fund expenses, but not from the Maritime Fund, Parking Fund, or Water Pollution Control Fund. (Tr. VIII, p.33-37)
4. Mr. Woodcock allocated the wrong amount for Accounting Wires. (Tr. VIII, p.37, ll.12-24, p.382, ll.1-7)
5. Mr. Woodcock allocated the wrong amount of Accounting expenses. (Tr. VIII, p.37, ll.12-24, p. 382, ll.1-7)
6. Mr. Woodcock incorrectly excluded MIS capital costs from his original calculation “that probably should have been included all along.” (Tr. VIII, p.41, ll.6-24, p.42, l.1)

These corrections increased Mr. Woodcock’s recommended City Service allowance from \$297,295 to \$377,728. (See Portsmouth Hearing Exhibit 12) Mr. Woodcock tried to rationalize his corrections by claiming they resulted from newly discovered information in Laura Sitrin’s hearing testimony. (Tr. VIII, p.31, ll.1-3, p.85-86) There can be no doubt that Mr. Woodcock made his corrections based on Ms. Sitrin’s live testimony as she exposed each of his errors. (Tr. VII, pp.57-72) However, as Mr. Woodcock admitted, her live testimony did not include new information. (Tr. VIII, p.85-94) The information that would have allowed Mr. Woodcock to make accurate calculations was in the record long before Laura Sitrin testified at the hearing.

Although Mr. Woodcock made these corrections, he continued to advocate other inaccurate and unreasonable positions regarding City Services. First, he argued that the City Service allocations in Dockets 4025, 4243 and 4355 were based on Newport’s actual expenses rather than budgets, and should continue to be allocated in that manner:

“Portsmouth Water challenged Ms. Sitrin’s use of the City of Newport’s budget to allocate \$10,091,631 in City Services Expenses to Newport Water instead of using the actual Test Year expenses (FY 2015) of \$8,734,259. In prior cases, the parties have settled on or agreed to use the actual test year amounts. The allocation used by Ms. Sitrin is more than \$1.3 million higher than the test year expenses and increases the water allocation by nearly 2%.” Woodcock Surrebuttal, p. 14.

On cross-examination, Mr. Woodcock admitted that Newport did not seek to use the City's budget to allocate \$10,091,631 in City Service Expenses:

Q. And what I want to clear up is Miss Sitrin never sought to allocate \$10,091,631 in city service expenses to Newport Water.

A. That is very correct. She never did, no. And to the extent that suggests that, I apologize for some very unartful words there, Mr. Keough. (Tr. VIII, p.79, ll.20-24, p.80, ll.1-2)

Mr. Woodcock also acknowledged that he did not specifically cite the "prior cases" where the "parties agreed to use actual test year amounts" or attach the settlement agreements or Commission Orders that memorialized these agreements. (Tr. VIII, p.75, ll.15-22) Like his testimony on the establishment of the restricted electricity account, Mr. Woodcock relied on his memory of prior cases to support his sworn testimony. (Tr. VIII, p.71-75) Nevertheless, Mr. Woodcock's memory does not trump the actual compliance schedules from Dockets 4025, 4243 and 4255, which show City Services allocations made based on adopted budgets, not actual expenses. (Newport Hearing Exhibit 11) And it is unsurprising that Mr. Woodcock would make this spurious claim. If the Commission calculated Newport's City Service expense based on the rate year (FY17) budgets as it did in Dockets 4025, 4243 and 4355, the total would be \$591,105.⁷ (See Newport Response to Commission Record Request 4)

The final, and perhaps clearest, example of Portsmouth unreasonable and unsubstantiated stance on City Service expense concerns the allocation of City Solicitor, Human Resources and Assessor costs. In his direct testimony, Mr. Woodcock testified that:

"Newport Water seeks to allocate 100% of the costs for the City Solicitor to the Water Fund, asserting that new functions have been added to the position and contending that all the City Solicitor's work is labor related." (Woodcock Direct, p.13, l.11)

⁷ This amount includes a 100% allocation of the City Solicitor's cost (after deducting the salaries and benefits for one Assistant City Solicitor, and the Municipal and Probate Court Judges). If the Commission allocated 50% of this same cost, the overall City Service Expense would be \$565,009.

Mr. Woodcock was 100% wrong. First, as he acknowledged on cross-examination, Newport did not seek to allocate 100% of the City Solicitor costs to the Water Fund. Newport deducted the salaries and benefits for one Assistant City Solicitor, and the Municipal and Probate Court Judges, and allocated the remainder. (Tr. VIII, p.80, ll.6-24) Second, Mr. Woodcock acknowledged that Ms. Sitrin did not testify that "all the City Solicitor's work is labor related":

Q. Now, second, in Miss Sitrin's testimony she did not say that all the City Solicitor's work is labor related, did she?

A. I don't remember if she said that. She probably did not because I know there's stuff other than labor in that budget.

Q. Let's look at her testimony to be sure. Her direct testimony, Page 5, Line 20.

Q. Miss Sitrin's testimony was, "The Human Resources allocation has substantially decreased to a change in the budget allotment for labor-related costs. Previously, all costs related to union negotiations, arbitrations, et cetera, were in the Human Resources budget. These costs are now in the City Solicitor's budget. Hence, there has been a corresponding increase in the allocation of City Solicitor costs to Newport Water." Did I read that correctly?

A. You did.

Q. So she did not say that all the City Solicitor's work is labor related, did she?

A. She did not.

As Mr. Woodcock later testified, he was willing to accept the reduction of the Human Resources allocation from 10.06 % to 1.74%, but was not willing to accept a corresponding increase in the City Solicitor's allocation. (Tr. VIII, p.82, ll.21-24, p.83, ll.1-4). Ms. Sitrin also testified that she completely eliminated any allocation of the Tax Assessor's costs because the City Solicitor's office now handles tax appeals. (Tr. VII, p.86, ll. 16-18) Portsmouth did find this change persuasive either.

A review of the combined allocations for these three departments in Docket 4355 demonstrates that Newport's proposed shift in expense to the City Solicitor's budget is entirely reasonable. In Docket 4355, the combined cost allocation for the Assessor (\$5,973), Human Resources (\$30,121) and City

Solicitor (\$20,459) was \$56,553. In this Docket, Newport proposes a combined allocation of \$57,676 for the Assessor (\$0), Human Resources (\$5,835) and City Solicitor (\$51,841).

2. COST ALLOCATION

A. Demand Factors

Newport does not wish to belabor the demand factors issues that consumed far too much time in this Docket, because they don't dictate Newport's proposed rates. Nevertheless, Newport believes it is important to highlight the facts:

- Newport allocated rates using the Cost Allocation Model approved by the Commission and all the parties, including Portsmouth, in Docket 4128.
- Newport did not change the Cost Allocation Model approved by the Commission and all the parties, including Portsmouth, in Docket 4128.⁸
- In Docket 4355, the Navy objected to the demand data Newport collected from the Navy, which Newport used to calculate demand factors.
- Thus, the Commission ordered Newport to continue collecting daily demand data for the Navy:

“This is not the last time the Commission will be reviewing Newport Water’s cost of service and rate design... PWFD has historically provided Newport Water with its consumption and Newport Water used this information in its cost allocation study. The Commission finds that this would be reasonable for the Navy as well. Therefore, the Commission orders Newport Water to continue taking daily reads of the Navy’s meters for inclusion in its next General Rate Filing. (Docket 4355 Order, p. 17)

- When Mr. Smith reviewed the Navy’s new daily demand data, he noted that the Navy’s peaking factor was “almost 60 percent higher” than the peaking factor used in Docket 4355. (Tr. VII, p. 123, ll.8-24, p.124, ll.1-3)
- Thus, he “dug a little deeper” and discovered that Portsmouth’s peaking factor based on **actual daily data Portsmouth provided** was higher also. (Tr. VII, p.124, ll.3-8)
- He then continued his analysis by examining the retail class peaking factor to see if it was higher as well, and since Newport does not have the metering capability to collect demand data for all

⁸ Newport originally suggested a change to the allocation of treatment capital costs in the model, but withdrew this request.

14,000 retail customers, he calculated the retail peaking factor using billing data as outlined in the AWWA M1 Manual. (Tr. VII, p.124, ll.9-20)

- Since **all three classes** showed higher peaking factors than those resulting from the 2011/2012 demand study, Mr. Smith plugged these new factors into the Docket 4128 Cost Allocation Model.
- The input of the new data into the Docket 4128 Cost Allocation Model provided base-line rates.
- Mr. Smith then modified the resulting rates as suggested by Mr. Mierzwa.
- The retail volumetric charges would have decreased by strictly following the results of the Cost Allocation Model, but he left those rates flat (with no increase or decrease), which allowed for a reduction of wholesale, public fire and private fire rates.⁹
- Thus, the rates Newport proposes do not directly result from the new demand factors.
- Without this adjustment, Portsmouth's rates would increase by 22% rather than 8%. Newport proposes. (See Exhibit 1 to Newport's Post-Hearing Brief)

This process yielded fair and equitable rates for all customers, and a lower rate for Portsmouth.

Yet, Portsmouth found reasons to complain. Mr. Woodcock argued that "the [2011/2012] demand study, which was funded by all ratepayers, took considerable time and money to collect and analyze. Newport Water should not be permitted to discard it without justification." (Woodcock Surrebuttal, p.25, ll.8-10). As set forth above, Newport was justified in developing new demand data because the actual daily demand data for the Navy and Portsmouth demonstrated higher peaking factors. This fact is not disputed in this Docket.

Mr. Woodcock also posited that Newport Water had the "capability to get hourly and daily peak demands with its new metering technology" if it saw a change in demand. (Woodcock Surrebuttal, p. 25, ll.17-18) He repeated this claim at the hearing where he testified that Newport could get hourly

⁹ This adjustment disproved Mr. Woodcock's assertion that "in every case where Newport Water introduces a new method in its rate calculation, the new method always penalizes Portsmouth and benefits Newport Water's retail rate payers." (Woodcock Direct, p.4, ll.9-11)

and daily data (and maybe data every fifteen minutes) from its meters. (Tr. VIII, p.136, ll.2-7). Thus, he claimed Newport could have collected actual data from Newport's retail customers. (Tr. VIII, p.136, ll.8-12) Newport disputed Mr. Woodcock's contention, and Mr. Woodcock admitted it was untrue under cross-examination. He was forced to admit that he didn't know much about Newport's meters:

- He didn't know the manufacturers, or types of meters: "At least three, maybe four." (Tr. VIII, p.183, l.5).
- He didn't know the meter models or sizes: "I mean there's different sizes so there's different models of course, in the different sizes." (Tr. VIII, p.183, ll.8-9)
- He didn't know how much demand data the different meters stored. "I've talked to meter distributors in the course of work for other places and I know generally what happens with Badger meters, with Neptune meters and what they store. I don't know specifically with what Newport has." (Tr. VIII, p.183, ll.13-18)

Confronted with his lack of knowledge, Mr. Woodcock backtracked:

Q. Based on the fact you don't know what type of meters they have, you don't know exactly the type of drive-by system they have, you cannot testify with a reasonable degree of certainty that Mr. Smith could have collected daily demand data from all of Newport's customers.

A. Oh, I don't think I ever said from all of them. (Tr. VIII, p.182, ll.9-17)

There is also nothing sacrosanct about the 2011/2012 demand data, which Newport collected from 55 commercial customers and 130 residential customers during the months of June, July, August and September. (Tr. VII, p. 173, ll. 4-8) The 2015 data came from all 14,000 retail customers for the entire year. Furthermore, the Commission's Docket 4355 Order clearly stated that "This is not the last time the Commission will be reviewing Newport Water's cost of service and rate design", and ordered Newport to continue collecting demand data from the Navy. Thus, the parties knew the demand inputs would change depending on the new Navy data.

The irony inherent in Portsmouth's position is multi-faceted. First, Newport's proposed rates do not result from either its demand factors or Portsmouth's. As Mr. Mierzwa testified, it isn't necessary to

choose which set of demand factors are “correct” because of the application of gradualism. (Tr. VI, p.147, ll.10-14) Second, Newport proposes lower rates than Portsmouth. Mr. Woodcock’s final surrebuttal testimony requests a 19% increase (\$6.1354), while Newport proposes an 8% increase (\$5.5433). Third, Portsmouth doesn’t oppose the application of gradualism:

“Portsmouth Water does not oppose the concept of gradualism to phase in large rate adjustments. Once the parties and the Commission determine the correct rates and charges, then the parties and the Commission should assess whether any particularly large increases should be phased in, as well as the appropriate method to achieve any phase-in. Portsmouth Water suggests that the Commission should apply principles of gradualism, as recommended by the Division and the Navy, to phase-in the significant difference between the wholesale and retail water rate increases.” (Woodcock Surrebuttal, p. 29, ll. 5-11)

Thus, it remains unclear what relief Portsmouth seeks. The Commission does not award blue ribbons or gold stars to the expert who develops the most “sophisticated” demand factors. The purpose of rate filings is to set fair and reasonable rates, not to have ratepayers bankroll academic and theoretical debates to determine which party is more “correct” than the other.

In setting fair and reasonable rates, the Commission is not strictly bound by any one formula because there isn’t one particular formula for setting rates. Mr. Mierzwa correctly stated rate setting is more of an art than a science. (Tr. VI, p.140, ll.14-18) There is no single definitive way to design rates, and there is no one “right” answer. Even Mr. Woodcock agrees with this proposition.

For utilities other than Newport, Mr. Woodcock agrees – and actually teaches – that rates are not set by simply applying a formula. In a March 2006 presentation to the Atlantic States Rural Water & Wastewater Association, Mr. Woodcock explained that utilities can design rates by first examining goals, and then designing rates to meet those goals. (PWFD Response to Newport Data Request 3-1) He did not say that a utility could only set rates by strictly following a formula, or by slavishly adhering to the past inputs to that formula.

Mr. Woodcock also practices what he teaches. When testifying on behalf of the Pawtucket Water Supply Board, he employed gradualism. (Tr. VIII, pp.97-101) When a Cost Allocation Model he developed resulted in a 44% increase for public fire customers, he sought to limit the increase to 5%, and have other customers subsidize the amount public fire customers should pay. (Id.) Finally, despite Mr. Woodcock protestations over the “proper” calculation of demand factors, he has not calculated or developed demand factors in “30 cases over past ten years involving the use of customer demand factors.” (PWFD Response to Newport Data Request 3-1)

B. Treatment Capital Allocator

Portsmouth’s request for strict adherence to the Docket 4128 Cost Allocation Manual is not absolute. It believes the model should change, when those changes benefit Portsmouth. (Tr. VIII, p.112, ll. 1-11) In Docket 4128, the parties agreed to allocate treatment costs based on the maximum day demand patterns of each customer class which resulted in a 63% allocation to the base cost category and 37% to Maximum Day category. Portsmouth now seeks an allocation of 50% of the treatment capital costs to the base cost category and 50% to Maximum Day cost category. Furthermore, Portsmouth did not cite to any authority to support this change, it was simply Mr. Woodcock’s belief that this new allocation is proper:

Q. Why is it that you're proposing the changes with respect to the allocation of treatment capital costs?

A. The reason I was proposing that change is I think it's the proper way to allocate those costs.. (Tr. VIII, p.114 l.24 to p.115, l.2)

Q. Why are you proposing that change now?

A. I'm proposing that change because there was an exhibit or a schedule that Mr. Smith had that explicitly showed that 8 million, million gallon capacities in his original filing, and when I saw that, it struck me that, gee, two thirds, one third isn't correct. It should be 50/50 for the allocation of capital. It was just something that popped out at me when I looked at it when I first started going through the filing. (Tr. VIII, p. 116, l.18 to p. 117, l.4)

Both Newport and the Division disagree with Mr. Woodcock. Mr. Mierzwa testified as follows:

Q. So the capital costs associated with constructing the plants can fairly be split as 50 percent of those capital costs going towards the construction for the capacity for an average day and 50 percent of the capital costs being for the construction of the facilities to handle a max day.

A. That's not my understanding. No, I don't agree with that, because we don't know what the capital costs associated -- it could be the capital costs are less for meeting demands. (Tr. VI, p.168, l.20 to p.169, l.7)

Q. ...Isn't it a common assumption in allocating costs that the capital costs for constructing the treatment plant are going to be 50 percent of this 8 mega gallons on -- sorry -- of this 8 mega gallon/16 mega gallon treatment plant, the first 8 mega gallons is 50 percent of the cost and the second 8 mega gallons is the other 50 percent of the cost?

A. No. (Tr. VI, p.170, ll.1-10)

C. Inconsistent Time Periods

Mr. Woodcock criticized Newport for changes it made to previously resolved issues:

“Portsmouth hoped and expected that this rate filing would not result in continued disagreements about previously resolved issues regarding matters such as cost allocations, customer demands, and city service expenses. Unfortunately, Newport Water continues to make decisions in its rate filings that are contrary to previously settled issues...” (Woodcock Direct, p.4, ll. 2-8)

But, he also found fault when Newport adhered to previously resolved issues:

“Portsmouth has consistently taken the position that it is critical that Newport Water use the same time period to look at the development of rate year water sales, treatment plant production, and water losses. A review of the schedules submitted by Newport Water reveals that it has not done so... Newport Water justifies these inconsistencies by pointing out that it is what was done in the settlement model in Docket 4355. (See PWFD 1-5 and PWFD 2-2) While this may be true, it does not mean that it is correct.” (Woodcock Direct, p.23, ll. 8-25)

Although, this issue has no substantive effect on rates, Newport agreed to use the two year average for unaccounted for water that Portsmouth demanded.

V. CONCLUSION

The City of Newport, Utilities Department, Water Division, prays that the Commission set new rates consistent with Exhibit A (Column C) attached to this memorandum.



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EXHIBIT A

Rhode Island Public Utilities Commission
 Docket 4595
 FY 2017 Rate Filing

Comparisons For Brief

	A			B			C		
	Newport Position at Hearing			Newport Position for Brief without Gradualism			Newport Position for Brief With Gradualism		
	Proposed Rates	% Change	Projected Revenues	Proposed Rates	% Change	Projected Revenues	Proposed Rates	% Change	Projected Revenues
Base Charge (per bill)									
Monthly									
5/8	\$ 5.15	5%	\$664,288	\$ 5.02	3%	\$647,520	\$ 5.02	3%	\$647,520
3/4	\$ 5.40	8%	\$161,741	\$ 5.27	5%	\$157,847	\$ 5.27	5%	\$157,847
1	\$ 7.22	19%	\$49,125	\$ 7.07	16%	\$48,104	\$ 7.07	16%	\$48,104
1.5	\$ 11.63	32%	\$52,475	\$ 11.42	30%	\$51,527	\$ 11.42	30%	\$51,527
2	\$ 16.31	44%	\$51,474	\$ 16.03	41%	\$50,591	\$ 16.03	41%	\$50,591
3	\$ 43.17	71%	\$30,046	\$ 42.40	68%	\$29,510	\$ 42.40	68%	\$29,510
4	\$ 50.90	76%	\$9,773	\$ 49.98	73%	\$9,596	\$ 49.98	73%	\$9,596
5	\$ 61.22	81%	\$0	\$ 60.08	78%	\$0	\$ 60.08	78%	\$0
6	\$ 68.95	84%	\$26,477	\$ 67.65	80%	\$25,978	\$ 67.65	80%	\$25,978
8	\$ 89.58	89%	\$1,075	\$ 87.85	86%	\$1,054	\$ 87.85	86%	\$1,054
10	\$ 126.96	95%	\$1,524	\$ 124.47	91%	\$1,494	\$ 124.47	91%	\$1,494
Portsmouth Base Charge (4")	\$ 1.35	-53%	\$16	\$ 1.29	-55%	\$15	\$ 1.29	-55%	\$15
			\$1,048,013			\$1,023,236			\$1,023,236
Volume Charge (per 1,000 gallons)									
Retail									
Residential	\$ 10.02	0%	6,625,444	\$ 9.70	-3%	6,413,853	\$ 10.02	0%	6,625,444
Non-Residential	\$ 11.22	0%	5,129,840	\$ 10.25	-9%	4,686,351	\$ 11.22	0%	5,129,840
			11,755,285			11,100,205			11,755,285
Wholesale									
Navy	\$ 6.6792	2%	1,650,283	\$ 7.3861	13%	1,824,943	\$ 6.5381	0%	1,615,421
Portsmouth Water & Fire District	\$ 5.6652	10%	2,451,796	\$ 6.2622	22%	2,710,166	\$ 5.5433	8%	2,399,040
			4,102,079			4,535,109			4,014,460
Fire Protection									
Public (per hydrant)	\$ 993.19	5%	1,031,924	\$ 1,085.18	15%	1,127,502	\$ 966.18	2%	1,003,861
Private (by Connection Size)									
Connection Size		Existing Charge Differential							
<2	\$ 34.31	32%	-	\$ 35.32	36%	-	\$ 33.74	30%	-
2	\$ 143.66	32%	-	\$ 147.90	36%	-	\$ 141.28	30%	-
4	\$ 487.84	22%	36,100	\$ 518.07	30%	38,337	\$ 477.10	20%	35,305
6	\$ 1,106.85	16%	260,110	\$ 1,197.67	26%	281,452	\$ 1,078.67	13%	253,487
8	\$ 2,174.51	14%	119,598	\$ 2,369.84	25%	130,341	\$ 2,116.25	11%	116,394
10	\$ 3,780.50	13%	-	\$ 4,133.04	24%	-	\$ 3,676.99	10%	-
12	\$ 6,006.33	13%	-	\$ 6,576.75	24%	-	\$ 5,840.11	10%	-
			\$ 415,808			\$ 450,131			\$ 405,187
			\$ 18,353,109			\$ 18,236,183			\$ 18,202,029

CERTIFICATION

I hereby certify that on September 12, 2016, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and regular mail.

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