

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No.:4611

Petition of the KENT COUNTY WATER AUTHORITY
Rate Application

COVENTRY FIRE DISTRICT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO
COMPEL KENT COUNTY WATER AUTHORITY TO PROVIDE MORE RESPONSIVE
ANSWERS TO CFD'S DATA REQUESTS

KCWA has objected to CFD's Motion that it provide more responsive answers to its data requests.

KCWA characterizes that request, curiously, as being an "... unsupported assertion..." that the original responses were unresponsive and complete and then goes on and "...contends that its responses were... compliant...".

With all due respect, FRCFD's position was hardly unsupported. It may be found to have been insufficiently supported to result in a Commission order compelling a more fulsome response but CFD respectfully suggests that it would not make an "unsupported" and, hence, frivolous assertion to this Commission and hopes that the Commission would not think it to be so disrespectful to it to have done so.

Once one gets past the advocacy of the main pleading, CFD notes that there are two main objections.

With regard to CFD – 1, CFD – 2, CFD – 3, CFD – 4 and CFD – 5, KCWA bases its objection to providing responsive answers to CFD's data requests on two grounds:

- 1) CFD's suggestion that KCWA's response was "cleverly unresponsive" had no merit.

CFD cannot respond to that position as it is not KCWA's belief that CFD's suggestion is accurate or not is irrelevant. It is the Commission's finding. CFD is just trying to get answers to

its questions. It has tried to pose simple questions that can be answered simply so as not to impose upon KCWA's resources and time and to avoid confusing the CFD.

- 2) CFD is attempting to utilize this rate case to argue its position in an unrelated collection case that has been tried before the RI Courts who ruled in favor of KCWA.

This is a bit of inside baseball. Let CFD put this in context.

KCWA and CFD were parties litigant in that certain action entitled KENT COUNTY WATER AUTHORITY vs COVENTRY FIRE DISTRICT which was docketed in the Superior Court for Kent County as C.A. NO.: KC2015-0487.

KCWA was suing CFD to collect unpaid fire hydrant rental fees.

CFD filed an Answer asserting a general denial, asserting affirmative defenses.

KCWA propounded a Request for Production of and/or Inspection of Documents. When the CFD failed to respond, it moved to compel. The motion to compel was granted and, unresponded to, became the basis for a Motion for Summary Judgment which was granted and withstood a motion to vacate.¹

For KCWA to suggest that the Superior Court proceeding was "tried" is a bit of overstatement. But, prevail it did and that matter is done and gone with.

However, because the matter was never "tried" in that the underlying factual matters were ever decided by a fact-finder, the underlying factual questions still remain, unanswered, in CFD's mind.

So, KCWA is absolutely correct that CFD is still trying to have find the answers to its open questions.

All of that being agreed to, so what?

Does that somehow disqualify CFD from trying, still, to get some sort of a glimmer as to why KCWA is asking this Commission to all increase hydrant rental fees by no less than 80%? CFD thinks that it is free to try to get the answer to its question in any forum to which it is entitled entrance.

¹ By way of placing things in context. CFD was represented by prior counsel. It was at about this time that CFD changed counsel under somewhat emergent circumstances. It was apparently during this change of command that KCWA propounded its discovery (which it was entitled to do no less than CFD is in the present proceeding) and was able to parlay this into a Judgment.

CFD also notes KCWA's position, with some interest, that

.... Perhaps if CFD carefully reviewed the detailed testimony and attached tables submitted by KCWA's consultant in its rate filing, CFD may find the information it is seeking, such as, what factors are considered in the requested rate increase.

Good advice, that, as CFD hopes to discuss in a later submission, as collegially phrased as it seems to be.

SUMMARY

So as CFD understands it, KCWA is resisting providing answers which CFD finds responsive because 1) CFD's objection has "no merit", because 2) CFD is somehow trying to use this proceeding vis-à-vis a Superior Court collection case which has gone to final judgment and its best suggestion is that CFD pore over the four volumes of mathematics to try to find the needle in the haystack that is its reasoning behind raising hydrant rental fees (as opposed to a general water tariff increase). This is like CFD asking KCWA what the definition of "outrageous" is and KCWA answering "Go to page 438 of Funk and Wagnalls Dictionary, second column, third word down."

CFD, respectfully argues that it is entitled to have its responsive answers to its data requests in the first instance and that it should not be required to pore over KCWA's material in an effort to determine what part of it, if any, is responsive.

It seems to CFD that KCWA is trying mighty hard to avoid answering CFD's requests which, no party has suggested, are overbearing, unduly burdensome or otherwise objectionable under the loose standard typically applied to discovery.

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August 30, 2016

Certification

I certify that I forward a copy of the foregoing Motion and a Memorandum in support thereof via e-mail to all on the following service list on August 30, 2016.

/s/ Arthur M. Read, II

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