



State of Rhode Island  
Division of Public  
Utilities & Carriers

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February 15, 2019

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

**Re: Docket No. 4919**

Dear Ms. Massaro,

The Rhode Island Division of Public Utilities and Carriers (“Division”) writes to provide the Rhode Island Public Utilities Commission (“Commission”) with its recommendation regarding the above-entitled docket. On January 9, 2019, the Lincoln Water Commission (“LWC”)<sup>1</sup> filed a petition with the Commission for a “non-regulatory approval of a *de minimus* change to its water system service area to permit a water main extension” to the premises of Anchor Auto Group/Benoit Realty, LLC (“Anchor”) located on Route 146 in North Smithfield, Rhode Island. *LWC Petition at 1*. Anchor is located in North Smithfield, approximately 2,400 feet from the Lincoln – North Smithfield border and a point of connection with LWC in the Town of Lincoln.

R.I. Gen. Laws § 39-1-2(20), in pertinent part, provides that a municipal or quasi-municipal corporation that “sells water, on a wholesale or retail basis, inside and outside its territorial limits” is not a “public utility” if it “has fewer than one-thousand five hundred (1,500) total customer service connections *and* provided outside sales do not exceed ten (10%) of the total water service connections or volumetric sales *and* provided the price charged to outside customers, per unit of water is not greater than the price charged inside customers for the same unit of water...” R.I. Gen. Laws § 39-1-2(20) (emphasis added). By proposing to serve Anchor outside of LWC’s

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<sup>1</sup> LWC is a quasi-municipal agency responsible for building and operating a public water system for the Town of Lincoln. As of June 30, 2018, LWC had 6,426 total service connections. *LWC Petition at 2; LWC 2018 Annual Report*.

territorial limits via the proposed water main extension, LWC believes it will be subject to the Commission's regulatory authority as a "public utility" under R.I. Gen. Laws § 39-1-2(20).

The Commission has exercised its discretion and granted a *de minimus* exception to the designation of a municipal water utility as a public utility under § 39-1-2(20) when the utility's extra-territorial water sales are "inconsequential" and one or more additional factors are present. *In Re: Town of Johnston Department of Public Works, Docket No. 3962, Order No. 19311 (June 19, 2008)*. See also *City of East Providence v. Comm'n*, 566 A.2d 1305 (R.I. 1989) (quoting *Pawtucket Power Assoc. v. Pawtucket*, 622 A.2d 452 (R.I. 1993) where the Court upheld a Commission decision to grant a *de minimus* exception on the basis that "small customer bases . . . have invariably been deemed . . . as *de minimus* in scope and thereby insufficient to trigger the regulatory process"). Additional factors that counsel against the exercise of Commission jurisdiction under a *de minimus* exception are that: (i) the cost of the design and construction of the extension is solely being borne by the customer to be served, (ii) the proposed customer cannot presently be served by its own territorial municipal water utility, and (iii) no future extension or tie-in is planned. *Town of Johnston, supra*.

In the matter before the Commission, the Division has reviewed LWC's petition, the responses to the Commission's data requests, LWC's response to the Division's e-mail correspondence dated February 7, 2019, R.I. Gen. Laws § 39-1-2(20) and applicable judicial and regulatory precedent. In its petition, LWC reports that its users consumed 687,747,810 gallons of water for the year ending June 30, 2018. *LWC Petition* at 2. See also *LWC 2018 Annual Report*. If the proposed water main is constructed, then LWC represents that Anchor will consume slightly less than 10,000 incremental gallons of water per day or only an additional .53% of total water consumed by LWC's customers. *LWC Petition* at 2. Historically, the Commission has not exercised jurisdiction over "inconsequential" extra-territorial water sales of this magnitude. *Town of Johnston, supra*.

Additionally, in response to a Commission data request, LWC submitted correspondence dated February 1, 2019 from the Town Administrator of the Town of North Smithfield. In the correspondence, the Town Administrator states:

The only supply system that is controlled by the Town of North Smithfield is the Slatersville Water Company which operates in an area of the community that, at its closest point, is over 3.5 miles away as the crow flies. *Such being the case an expansion of Slatersville Water Company system to the area nearby Anchor Subaru has been deemed neither practical nor affordable.*

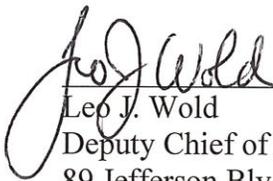
(Emphasis added). The Commission has deemed the inability of the proposed customer's in-territory municipal water utility to provide water service to the customer as another factor weighing in favor of granting a *de minimus* exception. *Town of Johnston, supra*.

Lastly, LWC has represented that the entire cost of the design and construction of the proposed water main extension will be paid for by Anchor<sup>2</sup>, and that LWC does not anticipate the construction of future extensions or tie-ins outside its territory at this time. *LWC E-mail Correspondence to the Division dated February 7, 2019*. These representations provide additional support for the Commission to grant LWC a non-regulatory approval for a *de minimus* change to its system. *Town of Johnston, supra*.

For the foregoing reasons, the Division recommends that the Commission grant LWC's petition as filed.

Respectfully submitted,

Division of Public Utilities and Carriers,

  
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cc: Service List

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<sup>2</sup> LWC represents that Anchor or its representative will be responsible for the successful operation of the extension without incident for a period of one year. LWC will take ownership of the new main upon the expiration of the one-year period. *LWC E-mail Correspondence to the Division dated February 7, 2019*