

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

**IN RE: PETITION OF LINCOLN WATER COMMISSION :
FOR NON-REGULATORY REQUEST FOR APPROVAL :
OF WATER MAIN EXTENSION OUTSIDE SERVICE : DOCKET NO. 4919
AREA TO ANCHOR AUTO GROUP/BENOIT :
REALTY, LLC, PREMISES, NORTH SMITHFIELD, RI :**

ORDER

On January 10, 2019, the Lincoln Water Commission (Lincoln Water)¹ filed a petition requesting non-regulatory approval of a *de minimus* change to its water system to allow a water main extension from its system to the Anchor Auto Group/Benoit Realty, LLC (customer) located in North Smithfield, Rhode Island, an adjacent town.² Lincoln Water filed the petition seeking a ruling from the PUC that service to the customer outside of its service territory would not cause it to be a public utility under R.I. Gen. Laws § 39-1-2(20) subject to Public Utilities Commission regulation.³ In support of its petition, Lincoln Water relied on a 1976 legal opinion from then-Attorney General Julius C. Michaelson that the PUC was free to conclude that supplying a small number of non-residents, if no other service was available to them, would be inconsequential and thus, the water service would be free from its regulation.

¹ Lincoln water is a quasi-municipal agency responsible for building and operating a public water system for the Town of Lincoln. It is also a wholesale customer of the Providence Water Supply Board, a regulated water supplier in Rhode Island. Providence Water Supply Board's regulatory attorney was notified by the PUC of this filing and of the procedural schedule set in this matter. Providence Water Supply Board did not participate in this matter.

² Pet. at 1; http://www.ripuc.org/eventsactions/docket/4919-LincolnWaterComm-Peittion_1-10-19.pdf.

³ R.I. Gen. Laws § 39-1-2(20) provides, in relevant part that a public utility includes a company that owns facilities "for the distribution of water to the consuming public within this state." However, 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 percent (10%) of the total water service connections or volumetric sales." Lincoln Water is not proposing to sell more than 10% of the total water service connections or volumetric sales outside of Lincoln, but it has more than 1,500 total customer service connections. Therefore, absent the PUC's finding for an exception, it would be subject to regulation due to the connection to the customer.

Lincoln Water has 6,426 customers who consumed 687,747,810 gallons of water⁴ in its most recent fiscal year. Lincoln Water calculated service to the customer in an estimated amount of 10,000 gallons per day would result in additional annual consumption of 0.53%. Thus, Lincoln Water concluded that the PUC should find that this incremental usage is *de minimus* and the PUC should not exercise jurisdiction over Lincoln Water based on the sale of water to the customer.

On January 22, 2019, the PUC issued data requests to Lincoln Water and the customer. The customer provided a letter from the Town Administrator of North Smithfield explaining that it would not be practical for the Town of North Smithfield to serve the customer at this time. The Town Administrator stated, “a connection to the Town of Lincoln water system that is less than 0.5 miles away with reasonable hydraulic parameters is by far the most rational consideration for extension of a public water supply to [the] area of our community” in which the customer is located.⁵

In its responses, Lincoln Water confirmed that the proposal is to provide a direct connect to a single customer located at a single address in North Smithfield using an eight-inch diameter pipe to be installed from the end of the Town of Lincoln’s public water supply main on Sayles Hill Road directly to the customer in North Smithfield.⁶ Additionally, Lincoln Water advised that it has only evaluated the customer’s request for service. Any other requests for service from surrounding property owners would be evaluated on a case by case basis and would be considered as long as the aggregate usage would still be considered *de minimus*.⁷ In an email to Attorney Wold for the Division of Public Utilities and Carriers (Division), Mr. Mendes, Superintendent of

⁴ Pet. at 2; Email from Romeo Medes to Leo Wold (Feb. 7, 2019).

⁵ Anchor Auto Group/Benoit Realty, LLC response to PUC 1-1; http://www.ripuc.org/eventsactions/docket/4919-Anchor-DR-PUC1_2-5-19.pdf.

⁶ Lincoln Water response to PUC 1-1; http://www.ripuc.org/eventsactions/docket/4919-LincolnWater-DR-PUC_2.7.19.pdf.

⁷ Lincoln Water response to PUC 1-2.

Lincoln Water confirmed that currently, Lincoln Water did not anticipate further water main extensions or water main tie-ins to be constructed to customers outside its service territory.⁸

On February 15, 2019, Leo Wold, Esq. submitted a letter on behalf of the Division of Public Utilities and Carriers recommending the PUC grant Lincoln Water's petition. Attorney Wold concluded that the circumstances surrounding Lincoln Water's request were consistent with prior PUC decisions granting water suppliers exceptions from PUC regulation under a *de minimus* exception. In support of this conclusion, Mr. Wold cited the small amount of incremental consumption, the fact that the customer could not reasonably acquire service from North Smithfield, and the fact that the costs of the main extension would be borne by the customer.⁹

At an Open Meeting held on February 28, 2019, the PUC reviewed the filings in this matter and found that the extension of the water main from Lincoln Water to the customer in North Smithfield would not trigger PUC jurisdiction over Lincoln Water due to the *de minimus* nature of the sale, namely one customer who will be purchasing less than one percent of annual sales from the utility. The Commission believes that to exercise jurisdiction in this instance would be contrary to the spirit of the law and not in the public interest, the Commission finds that the instant circumstances do not warrant regulatory intervention.

Accordingly, it is hereby,

(23565) ORDERED:

That the Petition for a *de minimus* exception filed by the Lincoln Water Commission is approved.

⁸ Email from Romeo Medes to Leo Wold (Feb. 7, 2019).

⁹ Letter from Wold at 1-3 (Feb. 15, 2019); http://www.ripuc.org/eventsactions/docket/4919-DPUC-Recommendation_2-15-19.pdf.

EFFECTIVE AT WARWICK, RHODE ISLAND ON FEBRUARY 28, 2019 PURSUANT
TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED APRIL 27, 2019.

PUBLIC UTILITIES COMMISSION



Margaret E. Curran

Margaret E. Curran, Chairperson

Marion S. Gold

Marion S. Gold, Commissioner

Abigail Anthony

Abigail Anthony, Commissioner

NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven days from the date of the order, petition the Rhode Island Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.