

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSIONS**

IN RE: PROVIDENCE WATER SUPPLY BOARD - Docket No. 4994
And
KENT COUNTY WATER AUTHORITY - Docket No. 5012

DOES THE RI PUBLIC UTILITIES COMMISSION HAVE JURISDICTION OVER
KENT COUNTY WATER AUTHORITY'S WHOLESALE RATE CHARGED TO THE CITY OF WARWICK

In the recent Providence Water Supply Board ("PW") Docket No. 4994 hearing, the RI Public Utilities Commission ("PUC") specifically requested the Parties in this Docket submit briefs regarding the question as to whether or not the PUC has jurisdiction over the wholesale rate charged by Kent County Water Authority ("KCWA") to the City of Warwick ("City").

KCWA is a public water district created pursuant to RI General Laws ("RIGL") § 39-16-1 *et seq.* Specifically, under RIGL §39-16-9, KCWA is subject to the PUC's jurisdiction "with respect to fixing rates and collecting charges, rates and charges of the district and/or authority shall be established in accordance with and subject to the provisions of chapters 1-5 [of RIGL Title 39]". In RIGL Title 39, Chapters 1-5, the RI Legislature empowered the PUC with jurisdiction to ensure that "inhabitants of the state be provide[d] just and reasonable rates and charges" for utility services. RIGL § 39-1-1 (b). Therefore, RI law mandates that KCWA rates are subject to the PUC jurisdiction.

However, in RIGL §39-3-38, the RI Legislature carved out an exception to the PUC's jurisdiction when it declared that any public waterworks or water service owned or furnished by any city. . . water district. . . or any other municipal or quasi-municipal corporation "may enter into wholesale contracts with each other for the sale of water without the consent and approval of the Division of Public Utilities and Carriers ("Division") [and the PUC]. RIGL §39-3-

38. Instead, the contract must simply be filed with the Division. RIGL §39-3-38¹. Further, such wholesale contracts shall be “fair wholesale rates or charges for the quantity of water taken and shall be for such times [and] at such rates fixed to continue during such periods as may be mutually agreed upon.” RIGL §39-3-38. (emphasis added).

KCWA’s sale of water to the City is based on a mutually agreed upon contract with fair and fixed wholesale rates for the quantity of water sold. In fact, the wholesale rate is the same wholesale rate KCWA pays for its wholesale water from PW. As a result, KCWA’s sale of wholesale water to the City clearly meets the requirements of RIGL §39-3-38 and is, thus, not subject to PUC jurisdiction.

There is an exception to RIGL §39-3-38 where PUC jurisdiction may be applicable. If there is a “default of agreement” between the wholesalers, then “the commission shall determine the rates in accordance with the provisions of §§ 39-3-10 and 39-3-11” . RIGL §39-3-8. This exception does not apply to KCWA’s sale of wholesale water to the City because KCWA and the City have a mutually agreed upon contract. Therefore, under RIGL §39-3-38, PUC jurisdiction is not required.

For these reasons, KCWA respectfully submits that the PUC does not have jurisdiction over the wholesale rate charged to the City.

¹ **39-3-38. Wholesale contracts for the sale of water – Rates or charges.**

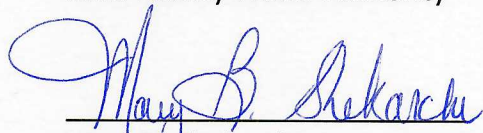
The authority of any public waterworks or water service owned or furnished by any city, town, water district, fire district, or any other municipal or quasi-municipal corporation to enter into contracts with each other for the sale of water at wholesale is hereby confirmed, and the wholesale contracts shall be exempt from the provisions of § 39-3-24(1) but shall be filed with the division; provided, however, that whenever any public waterworks or water service owned or furnished by any city, town, water district, fire district, or any other municipal or quasi-municipal corporation shall enter into wholesale contracts with each other, the fair wholesale rates or charges for the quantity of water taken shall be for such times and at such rates fixed to continue during such periods as may be mutually agreed upon, or in default of agreement, as shall be determined by the commission in accordance with the provisions of §§ 39-3-10 and 39-3-11.

History of Section.

(P.L. 1982, ch. 138, § 1.)

Dated: July 24, 2020

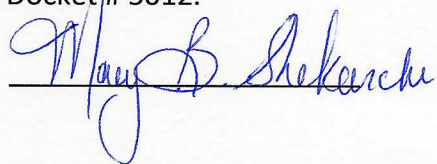
Respectfully submitted,
Kent County Water Authority



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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2020, I filed and serviced this document to the attached electronic service list in Docket # 4994 and in Docket # 5012.



**Docket No. 5012 - Kent County Water Authority – Abbreviated Rate Filing
Service List 2/11/2020**

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