

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS  
89 JEFFERSON BOULEVARD  
WARWICK, RHODE ISLAND 02888**

IN RE: Narragansett Bay Commission :  
Application For Authority to Incur Debt : Docket No. D-19-21

**SUPPLEMENTAL ORDER**

Whereas: On August 6, 2019, the Division of Public Utilities and Carriers (“Division”) issued a final written decision in the instant docket, Order Number 23643. The decision approved a July 12, 2019 application filing by the Narragansett Bay Commission (“NBC”) that sought approval to issue long-term debt through a federal loan program established by the Water Infrastructure Finance and Innovation Act of 2014 (“WIFIA”), which is administered by the United States Environmental Protection Agency (“USEPA”), in an amount not to exceed \$270,000,000.

Whereas: Shortly after the issuance of the Division’s final written decision in this docket, also on August 6, 2019, NBC requested an amendment (via email) to the Division’s decision to clarify that the borrowing, and the Division’s approval of the borrowing, is in an “**original principal**” (emphasis in original) amount not to exceed \$270,000,000. In its request for clarification and amendment, NBC observes that while “page 2” of the order recognizes the “original principal” amount language, “four other sentences” in the order exclude this qualifying language. NBC argues that “[s]ince the interest is capitalized and the principal amount subsequently increases, we would like to have those words included in [the] four other sections of the order to avoid any potential problems with EPA.”

Whereas: The Division finds NBC's request for clarification and amendment reasonable. Accordingly, the Division is issuing this decision as a supplement to Order No. 23643 to include the requested amendments to the four sentences identified by NBC that exclude the desired "original principal" language. The original decision (with footnotes omitted), with the requested amendments, is reproduced and highlighted below:

### **REPORT AND ORDER**

On July 12, 2019, the Narragansett Bay Commission ("NBC"), One Service Road, Providence, Rhode Island, filed an application with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking approval to issue long-term debt through a federal loan program established by the Water Infrastructure Finance and Innovation Act of 2014 ("WIFIA"), which is administered by the United States Environmental Protection Agency ("USEPA"), in an **original principal** amount not to exceed \$270,000,000. The application was filed in accordance with the requirements contained in Section 39-3-15 of the Rhode Island General Laws.

In response to the application filing, the Division conducted a duly noticed public hearing on August 5, 2019. The hearing was conducted in the Division's hearing room, located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances:

For the NBC: Joseph A. Keough, Jr., Esq.

For the Division's  
Advocacy Section: Christy Hetherington, Esq.  
Special Assistant Attorney General

The NBC proffered pre-filed direct testimony from four witnesses in support of its application. The witnesses were identified as Ms. Karen L. Giebink, the NBC's Chief Financial Officer; Mr. William J. Fazioli, Director with Public Financial Advisors, LLC. ("PFM"); Karen S.D. Grande, Esq., the NBC's bond counsel; and Ms. Kathryn Kelly, P.E., the NBC's CSO Program Manager.

Ms. Giebink testified that the NBC is requesting Division approval to borrow an original principal amount not to exceed \$270,000,000 from the USEPA for the purpose of financing the design and construction of certain combined sewer overflow control facilities (CSO) and to issue revenue bonds evidencing the loan. Ms. Giebink testified that this is the first time the NBC has requested the Division's approval for a loan from the USEPA.

As background, Ms. Giebink related that the NBC is under a Consent Agreement with the Rhode Island Department of Environmental Management ("RIDEM") to implement a federally mandated CSO program in three phases. She noted that Kathryn Kelly, the NBC's CSO Program Manager, would be providing a more detailed description of the CSO program in her testimony, *infra*.

Ms. Giebink next provided some background information on the WIFIA loan program. She related that the WIFIA program offers long-term, low cost credit assistance to qualified credit worthy borrowers for eligible water and wastewater infrastructure projects. Ms. Giebink testified that NBC submitted a letter of Interest in July of 2018 for the CSO Phase III A Facilities and based upon that submittal, USEPA invited NBC to apply for a WIFIA loan. Ms. Giebink related that NBC filed its application for the WIFIA loan in March 2019, which included information about NBC, project details, operations and maintenance plans, and a financing plan. She explained that the maximum amount of a WIFIA loan is 49% of a project's cost and total federal assistance may not exceed 80% of a project's eligible costs. Ms. Giebink testified that the updated inflation-adjusted cost of the CSO Phase III A project is \$548.4 million and the WIFIA original principal loan amount is \$268.7 million.

Ms. Giebink testified that the WIFIA loan program provides many advantages for borrowers compared to borrowings through the Rhode Island Infrastructure Bank ("RIIB"), including amortization flexibility, the capitalization of interest, lower issuance costs and annual service fees, and a lower interest rate. She opined that these advantages translate into significant savings for ratepayers. Ms. Giebink proffered several graph and table exhibits that demonstrated the advantages of the WIFIA's flexible amortization features. She also related that the projected annual service cost for the WIFIA loan is approximately \$20,000 - \$25,000 per year

compared to RIIB annual service fees of approximately \$780,000 over the life of a loan of similar size.

Regarding the interest rate, Ms. Giebink characterized the rate as “excellent.” She explained that USEPA determines the interest rate at closing and it is based on the State and Local Government Securities (“SLGS”) rate for the weighted average maturity of the loan. She related that based on the amortization of the loan as structured for modeling purposes, the interest rate is 2.64% “and will likely be lower at closing.”

Ms. Giebink also testified that the loan amount is significant as it will enable the NBC to fund almost half of the CSO Phase III A program in a single low-interest rate borrowing, which will eliminate the need for multiple debt issuances and associated costs. Ms. Giebink also noted that the WIFIA program does not require the funding of a debt service reserve.

Ms. Giebink next testified that based on the revenue requirement that was approved by the Commission in Docket 4890, the NBC has sufficient revenues to meet the additional bonds test as set forth in Section 205 (2)(iv) of the Trust Indenture. She explained that because the WIFIA loan can be “wrapped” around NBC’s existing debt, the impact to ratepayers can be minimized. Ms. Giebink proffered an exhibit to show that current rates provide sufficient revenue to meet these debt service obligations until FY2014.

With respect to funding the overall CSO Phase III A project, Ms. Giebink offered the following breakdown NBC’s planned funding sources:

Revenue Bonds	\$175,611,339
SRF Loans	48,227,777
WIFIA Loan	268,721,668
Pay-go Cash	<u>59,333,337</u>
Total	\$551,894,121

Ms. Giebink also confirmed that the NBC will need future rate increases to service the non-WIFIA borrowings identified above.

Ms. Giebink closed her testimony with a request for a Division decision by August 15, 2019. Her request was

predicated on an anticipated USEPA closing date of August 26, 2019.

Before discussing the instant loan proposal, Mr. William Fazioli offered some background information on PFM and on the independent financial advisory services that PFM provides to public entities. Mr. Fazioli related that over the last 40 years, PFM has grown into a national firm with over 600 employees in 38 offices across the United States. He testified that for the “21st consecutive year, PFM has maintained its position as the number one financial advisor in the industry, providing financial advisory services in more than 791 transactions for a total par amount in excess of \$63.5 billion in 2018.” Mr. Fazioli added that in terms of wastewater issuers, “PFM has been the top ranked financial advisor in this sector for several years as well while representing other large wastewater operators including the Massachusetts Water Resources Authority and the DC Water and Sewer District.” Mr. Fazioli testified that PFM was appointed in 2012 to serve as Financial Advisor to the NBC by its Board of Commissioners. He related that since 2012 he has gained much experience working with the NBC and is familiar with NBC’s borrowing history and credit needs.

With respect to the instant matter, Mr. Fazioli indicated that he has been asked to provide testimony in support of NBC’s planned \$270,000,000 **original principal** borrowing through the WIFIA loan program administered through the USEPA. At the outset, Mr. Fazioli discussed how PFM modeled the proposed funding of the CSO Phase III A Facilities and developed the WIFIA loan structure. He related that PFM used a debt optimization model which incorporates the “What’sBest!” linear optimization tool to structure the capital financing plan. Mr. Fazioli testified that with What’sBest!, “the user places constraints on the model (i.e. coverage cannot go below 1.25X in any year, RIIB loans must be 20 years of level debt service, etc.) that cannot be violated when What’sBest! is determining the solution. Outside of these constraints that are placed on the model, What’sBest! is given the ability to modify the funding source mix between WIFIA, RIIB, and NBC open market revenue bonds along with the ideal amortization length for each to determine the most inexpensive path of financing.” Mr. Fazioli related that with this approach, PFM is able to place a high degree of confidence on the final structure of the financing sources since every possible funding mix and

amortization length for each source was contemplated by What'sBest!.

Mr. Fazioli testified that the model prepared for NBC incorporated NBC's projected cash flows for the CSO Phase III A Facilities along with NBC's other programmed capital improvement expenditures. He related that other modeling considerations included maximum WIFIA funding of 49% of the project cost. Mr. Fazioli noted that the resulting draws and amortization schedule is included in Ms. Giebink's direct testimony. Mr. Fazioli testified that the balance of the funding for NBC's share of the project is from a combination of NBC open market revenue bonds, loans from the RIIB and restricted funds for pay-go capital.

Mr. Fazioli also agreed with Ms. Giebink, that the WIFIA loan is the preferred funding source for the NBC's CSO project. He related that in addition to low fees and an attractive interest rate, the flexibility of the loan amortization and repayment term offer significant benefits to NBC. He also emphasized that the amount of the loan is much greater than what would be available through the RIIB; and that the ratepayers will benefit from the additional costs associated with multiple debt issuances.

Mr. Fazioli next confirmed that the interest rate for the WIFIA loan will be determined based on the SLGS rate for the weighted average maturity of the loan. He explained that the SLGS are securities that the Department of the Treasury may issue to state and local government entities to assist with complying with tax-exempt bond regulations. He testified that the SLGS rate in May 2019 was 2.64%, but that he expects the rate to be lower at the time of the closing. To further demonstrate the benefits of this WIFIA loan, Mr. Fazioli compared the interest rate with projected RIIB and open market interest rates. He testified that based on current market conditions, the WIFIA interest rate is for a 26-year bond with an average life of 22 years is comparable to a 20-year RIIB loan and lower than what the NBC would be able to achieve through an open market revenue bond issue.

In his concluding comments, Mr. Fazioli noted that USEPA has planned the closing for August 26, 2019. Based on the timing of this closing date, Mr. Fazioli opined that NBC needs a Division decision by August 15, 2019.

Ms. Grande testified that she has served as bond counsel to the NBC for many years. Ms. Grande related that she has assisted the NBC with the issuance of several user fee anticipation notes, revenue notes, loans from the RIIB and revenue bonds.

Testifying in support of the proposed WIFIA borrowing, Ms. Grande compared the legal framework of the WIFIA loan to NBC's other revenue bonds and borrowings through RIIB. She related that the WIFIA loan will be secured as a revenue pledge with the same security as NBC's other revenue bonds. Ms. Grande explained that the loan agreement generally parallels the RIIB loan agreements "although there are a few additional requirements primarily relating to compliance with federal regulations." Ms. Grande proffered the draft loan agreement to buttress her testimony. She added that the bond covenants also parallel those set forth in NBC's Indenture.

In closing, Ms. Grande testified that the NBC Board of Commissioners authorized this borrowing from the USEPA at their June 18, 2019 meeting.

Ms. Kelly was proffered by NBC to provide the Division with some background on the third and final phase of the CSO Abatement Program. She related that the NBC is under a Consent Agreement with the Rhode Island Department of Environmental Management ("RIDEM") to implement a federally mandated CSO program in three phases. Ms. Kelly testified that the cities of Providence, Central Falls and Pawtucket have combined sewers that overflow at approximately 63 locations during significant wet weather events. She related that the CSO program will mitigate the impact of these overflows by approximately 98% when all three phases are completed.

Ms. Kelly next described the three phases. She explained that the first phase, which addresses and treats 40% of the CSO Volume, became operational in October 2008. She noted that this phase involved the construction of the Main Spine tunnel, drop shafts, and Tunnel Pump Station for an overall cost of about \$348 million.

The second phase, which addresses and treats 20% of the CSO Volume, became operational in December 2014. This phase included the construction of two main interceptors in the Field's Point service area, sewer

separation projects, and a wetlands treatment facility. The cost for phase two was approximately \$177.5 million.

According to the witness, the third phase (CSO Phase III) will address and treat the remaining CSO Volume and is broken down into four phases, A, B, C and D, and is scheduled for completion in 2041. Ms. Kelly testified that the total pre-design estimate for the CSO Phase III in 2018 dollars is \$779.1 million.

Ms. Kelly next testified that in 2014, NBC initiated a reevaluation of the Phase III facilities proposed in the Conceptual Design Report Amendment (“CDRA” - which was approved by the RIDEM in 1998) “to determine if there was a more cost effective approach that could either reduce the cost or extend the schedule of Phase III by employing new techniques and approaches, specifically Integrated Planning, Affordability Analysis and Green Technology.” She related that as a result of its reevaluation, four alternatives were developed; these alternatives have been discussed with the NBC’s Board of Commissioners during several meetings and technical sessions. Ms. Kelly related that ultimately the NBC’s Board of Commissioners selected the “Modified Baseline with Phased Implementation” alternative on April 28, 2015. She noted that this alternative was selected because “it met the higher water quality standards, provided a schedule that allowed for adaptive management and resulted in the most favorable sewer rate of the three tunnel alternatives.”

Ms. Kelly testified that the most significant change to the CDRA is the proposed phasing of the program. She related that the schedule for the completion of the CSO Phase III facilities has been increased from 9 years to 23 years, with an estimated completion date of 2041. Ms. Kelly testified that RIDEM incorporated some changes into the NBC evaluation report and approved the amended schedule in December 2017. She added that NBC’s Consent Agreement with RIDEM has been renegotiated based upon the final approved plan.

Ms. Kelly next provided a status report on the design and construction taking place on the CSO Phase III A facilities. She also provided an update on the cost. She related that in the reevaluation report, the design and construction of the CSO Phase III A facilities was estimated to cost \$502.4 million in 2018 dollars; this Project cost was



refined between the issuance of the reevaluation report and the submittal of the WIFIA Application. She also related that the USEPA requires project costs to be adjusted to the projected year of construction so that the WIFIA loan is appropriately sized. Ms. Kelly testified that after using a 3% inflation rate per year, the 2018 estimate has been adjusted upward to \$548.4 million.

After a brief cross-examination of the NBC's witnesses, the Advocacy Section stated for the record that it was satisfied from the evidence presented, that NBC had met the requisite burden of proof set forth in R.I.G.L. §39-3-15, et seq. and that the proposed borrowing is in the public interest.

### FINDINGS

Predicated on a thorough examination of the record in this matter, the Division finds that the NBC's application seeking approval to issue long-term debt through a federal loan program established by the Water Infrastructure Finance and Innovation Act of 2014, which is administered by the United States Environmental Protection Agency, in an **original principal** amount not to exceed \$270,000,000, is reasonable and in the best interest of ratepayers.

Now, therefore, it is

(23643) ORDERED:

1. That the Narragansett Bay Commission's July 12, 2019 application seeking approval to issue long-term debt through a through a federal loan program established by the Water Infrastructure Finance and Innovation Act of 2014, which is administered by the United States Environmental Protection Agency, in an **original principal** amount not to exceed \$270,000,000, is hereby approved as filed.

2. That the Division hereby makes this approval contingent upon the NBC's use of the debt service allowance previously approved by the Public Utilities Commission, or if subsequently required, by additional debt service allowances approved by the Public Utilities Commission.

\*[Date and Signatures from Order No. 23643 omitted]\*

Now, therefore, it is

(23645) ORDERED:

1. That the NBC's August 6, 2019 motion for an amendment to the Division Order No. 23643 to clarify that the borrowing, and the Division's approval of the borrowing, is in an "**original principal**" amount not to exceed \$270,000,000, is hereby granted, as reflected herein.
2. That this decision shall serve as a supplement to Order No. 23643.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON AUGUST 9, 2019.

  
\_\_\_\_\_  
John Spirito, Jr., Esq.  
Hearing Officer

APPROVED:   
\_\_\_\_\_  
Kevin Lynch  
Deputy Administrator<sup>1</sup>

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<sup>1</sup> Normally, the Administrator of the Rhode Island Division of Public Utilities and Carriers ("the Administrator") would approve and sign Orders such as this. In his absence, and pursuant to the authority granted by R.I.G.L. §§ 42-20-3 and 42-20-5, Deputy Administrator Lynch has been designated and authorized by the Administrator to sign Orders such as this issued by the Division of Public Utilities and Carriers.