

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: INDEPENDENT OVERSEER FOR THE :  
NARRAGANSETT BAY COMMISSION'S : DOCKET NO. 3162  
COMBINED SEWER OVERFLOW :  
ABATEMENT PROJECT :

REPORT AND ORDER

In Order No. 16751, the Rhode Island Public Utilities Commission (“Commission”) found that it was in the public interest to retain such experts and consultants “as it deems appropriate” pursuant to R.I.G.L. Section 39-1-19 and 39-1-26 to provide oversight of the Combined Sewer Overflow Abatement Project (“CSO”) and that the Commission “will in due course” specify the duties and tasks these experts and consultants will perform.<sup>1</sup> After published notice, the Commission conducted a public hearing on July 23, 2003 at its offices located on 89 Jefferson Boulevard, Warwick, Rhode Island. The purpose of this hearing was to decide whether it is appropriate at this time for the Commission to retain an independent overseer for the CSO project. The following appearances were entered:

FOR NBC:	Peter McGinn, Esq.
FOR DIVISION:	Leo Wold, Esq. Special Assistant Attorney General
FOR ATTORNEY GENERAL:	William Lueker, Esq. Special Assistant Attorney General
FOR COMMISSION:	Steve Frias, Esq. Executive Counsel

At the hearing, public comment was received from a representative of Save the Bay and former Commissioner Brenda Gaynor in support of the Commission going

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<sup>1</sup> Order No. 16751, pp. 49-50.

forward with the process of retaining an independent overseer for the CSO project. In addition, the Commission received written public comment from former Attorney General Sheldon Whitehouse in support of the Commission going forward with retaining an independent overseer for the CSO project.

At the hearing, the Attorney General restated its support for the Commission retaining an independent overseer. NBC reiterated its opposition to the Commission retaining an independent overseer. Counsel for NBC argued there is no need to expend funds for an independent overseer and that the Division provides independent oversight of the CSO project. Joseph Pratt testified on behalf of NBC. Mr. Pratt stated that the CSO project Phase I is currently on budget, on schedule, and the current cost estimates are reasonable. Also, Mr. Pratt noted that NBC has always accepted the lowest bidder for Phase I of the CSO project and that all approved change orders have had the net effect of decreasing costs. However, Mr. Pratt admitted he has requested outside assistance for engineering services relating to change orders. Also, Mr. Pratt indicated that if there was an imprudent expenditure for the CSO project, the ratepayers of NBC would absorb the cost.

Mr. Alberico Mancini testified on behalf of the Division. He stated that the Division's position is that the Commission does not need to retain an independent overseer. Mr. Mancini agreed with Mr. Pratt's testimony that the CSO project is on budget and on schedule. He indicated that he has not sought any outside assistance in providing oversight for the CSO project. Mr. Mancini stated that he was qualified to review change orders because of his engineering degree and construction experience.

At an open meeting on August 22, 2003, the Commission reviewed the evidence. The Commission determined it will not retain an independent overseer at this time, but that NBC would continue to collect \$150,000 annually in rates to be placed in a restricted account.

At the outset this Commission order should not be considered a reversal of the Commission's prior Order No. 16751. In the prior order, the Commission indicated that it would retain an independent overseer "as it deems appropriate" and would "in due course" specify the tasks of the independent overseer. This language suggests more of a reservation of rights rather than an affirmative statement that an independent overseer will be retained. Second, even assuming that the Commission in this order is reversing a prior Commission order, this action is clearly permitted. This Commission is not bound by its prior orders in setting prospective rates. Certainly, a prior Commission cannot bind future Commissions with a decision to retain experts or consultants. A future Commission can assess for itself whether it is in the public interest to expend ratepayer funds for the assistance of experts or consultants. Third, this Commission made the decision after conducting a public hearing with published notice so as to give all parties concerned an opportunity to be heard.

Based on the evidence, the Commission finds that it would not be in the public interest to expend ratepayer funds to retain an independent overseer at this time. The professional staff of NBC appears to have the integrity and competence to provide oversight for the CSO project. Louis Berger is a well-known and respected firm that will provide valuable oversight over the CSO project. The Division has kept the Commission informed regarding the CSO project and NBC currently files quarterly reports with the

Commission discussing the status of the CSO project. At present the CSO project Phase I is on budget and on schedule. Over two years ago in January 2001, the prior Commission indicated a potential need for an independent overseer. As of August 2003, without an independent overseer in place, nothing has arisen to raise an alarm that the CSO project Phase I will become another “Big Dig”.

However, although the Commission is not retaining an overseer at this time, it will exercise diligence in oversight of projects involving ratepayer funds. Accordingly, by December 2003, the Commission will require changes in NBC’s reporting requirements to better indicate periodic changes in actual versus budgeted expenditures, changes in estimated costs, schedules of projects, and any significant changes to the projects. In addition, the Commission will schedule quarterly meetings with NBC and the other parties to review the status of the CSO project. In the meantime, NBC will continue to restrict \$150,000 annually in rates in the event the Commission needs to retain experts or consultants. If a problem or significant concern should arise, the Commission will reconsider its decision and hire a consultant with a specific skill set to review and address the problem that may or has arisen. Hiring an independent overseer with a broad general skill set is premature and an inefficient use of ratepayer funds. A \$150,000 annual expenditure for a project that could span two decades is not in the public interest at this time. The costs of this insurance simply outweighs the probable benefit to the ratepayers.

Accordingly, it is

(17559) ORDERED:

1. At this time, the Commission will not proceed with retaining an independent overseer for the Combined Sewer Overflow Abatement Project Phase I.
2. NBC shall comply with new reporting requirements to be developed in coordination with the Commission.

EFFECTIVE AT WARWICK, RHODE ISLAND, PURSUANT TO AN OPEN MEETING ON AUGUST 22, 2003. WRITTEN ORDER ISSUED SEPTEMBER 12, 2003.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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Kate F. Racine, Commissioner\*

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Robert B. Holbrook, Commissioner

\*Commissioner Racine dissents.

Racine, K., dissenting

I dissent from the majority's determination that this is not the right time to engage an independent overseer for NBC's CSO project. I continue to support the need for an independent overseer due to the magnitude of the project. This is, quite possibly, the largest public works utility project in the State's history. The first phase alone is estimated to cost ratepayers at least \$300,000,000 dollars. The annual \$150,000 to fund the independent overseer would represent only \$1.87 per year to the ratepayer. Especially in light of testimony received at the hearing that if there is a cost overrun, even if the Commission were to find NBC imprudent, ratepayers would be assessed the cost, \$1.87 per year is a small price to pay for oversight. I do not believe that relying on reports from NBC and the Division provides the sufficient level of independent review for a project that will cost more than a quarter of a billion dollars. Therefore, at a minimum, the Commission should at least expend the amount necessary to proceed with an RFP at a cost of less than \$15,000.

I note that this sentiment is shared by former Attorney General Whitehouse on recent comments regarding the importance of oversight and in continuing forth with an independent overseer. Mr. Whitehouse, referencing the NBC CSO project, noted that "an ounce of prevention is worth a pound of cure." He further stated that when expenditures of a public utility rise to the level of imprudence, imprudent charges could be disallowed from utility rates. However, when a public agency only has an after the fact review of another public entity's actions, pursuit of imprudent expenditures is a folly because the costs end up being borne by the public. Mr. Whitehouse further commented that he was astounded at the reconsideration of the question of independent overseer by the

Commission.<sup>2</sup> I believe that \$1.87 per ratepayer per year for funding of an independent overseer is just that ounce of prevention.

Finally, I believe that consideration must be given to administrative finality. This case had been appealed to the Supreme Court and the Supreme Court upheld the majority decision of the Commission. If the concept of administrative finality is conceded on this issue, then change in circumstances must occur in order to place the question back before the body for consideration. The majority's decision to reserve its right to revisit this issue in the future only provides less certainty to all concerned.

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Kate F. Racine, Commissioner

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<sup>2</sup> See Letter from Sheldon Whitehouse to the Commission dated July 25, 2003.