

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: KENT COUNTY WATER AUTHORITY :
APPLICATION TO CHANGE RATE SCHEDULES : DOCKET NO. 3311

REPORT AND ORDER

On March 30, 2001, the Kent County Water Authority (“KCWA”) filed an application with the Rhode Island Public Utilities Commission (“Commission”) seeking a revised tariff, representing a general increase in rate revenues without any change in the rate structure. This request, if granted, would increase KCWA’s present revenues by \$3,094,955, or 26.93%. On April 16, 2001, the Authority amended its filing and reduced the requested increase to 23.5%. The Commission suspended KCWA’s proposed rate increase on May 23, 2001. The instant rate case filing represents KCWA’s sixth such filing in the last 5 years. The following table provides a brief history:

Docket	Filing Date	Type of Filing	Increase Requested	Increase Allowed
2555	3-27-97	General rate increase	\$ 2,981,273	\$ 2,200,000
2555	9-24-98	Abbreviated filing for IFR increase only	\$ 1,000,000	\$ 1,000,000
2860	12-30-98	Abbreviated filing	\$ 898,044	\$ --0--
2860 & 2979	10-27-99	Abbreviated filing for IFR, debt service, and pass-through wholesale increase	\$ 1,671,590	\$ 1,671,590
3181	3-30-00	Pass through of wholesale rate increase	\$ 187,849	\$ 187,849

KCWA Direct Testimony

In support of its filing, KCWA submitted pre-filed testimony from Barbara Graham, Chairperson of KCWA; Timothy J. Brown, PE, General Manager/Chief

Engineer of KCWA; Arthur C. Williams, Director of Administration & Finance for KCWA; John P. Ryan, Vice President at Quick & Riley, financial advisor to KCWA; John L. Keaney, an Associate with the environmental consulting firm of Camp Dresser & McKee; and Christopher P.N. Woodcock, President of Woodcock Associates, Inc., a consulting firm specializing in water and wastewater rates and financial studies.

In her pre-filed testimony, Ms. Barbara Graham generally outlined the goals KCWA hoped to achieve with the current filing. She stated that KCWA is an old system in need of continuing improvements “through an updated capital improvement program.”¹ These improvements include meeting heightened “operation and maintenance” requirements and hydrant maintenance.² Furthermore, KCWA has outgrown its current administrative facility and is in need of another.³ She explained that the new administrative facility would provide added security for customers, visitors and equipment.⁴ KCWA also requested authorization to add five (5) new employees “to improve services to the ratepayers.”⁵ She explained that a former management study had not envisioned the existence of new programs or the growth in existing programs that KCWA had undertaken in recent years.⁶ These new programs include the GIS system and an expansion of the Dig Safe Program.⁷ In conclusion, she stated that the inefficiencies KCWA is currently suffering are not in the best interests of the ratepayers.⁸

In his pre-filed testimony, Mr. Timothy J. Brown, P.E., explained that KCWA’s IFR Program Funding request would continue the \$3.5 million funding level currently in

¹ Pre-Filed Testimony of Barbara Graham, p. 2.

² Id.

³ Id.

⁴ Id. at 3.

⁵ Id.

⁶ Id.

⁷ Id.

rates for the “active infrastructure program.”⁹ Mr. Brown detailed the current infrastructure replacement program, which is based on a year-to-year program design. He stated that periodic reports to the Commission showed that KCWA had utilized the funds each year in accordance with the designs.¹⁰ Mr. Brown testified that the 2001 design was economical because it would include “two major construction contracts” that would exceed the funding, but would allow KCWA to “jump quickly next year into another program that has already been designed.”¹¹

Mr. Brown further indicated that KCWA was requesting continued funding of the current Renewal and Replacement Fund in the amount of \$175,000. This fund is used to replace and purchase equipment, specifically trucks, backhoes and Dig Safe equipment.¹²

Next, Mr. Brown explained KCWA’s Water Supply System Management Plan. KCWA is required to revise this plan in accordance with new Rules and Regulations issued by the Water Resources Board. This plan has to be filed by March 2001. In order to revise the plan, KCWA hired a consultant at \$66,055 to prepare the revised plan. KCWA is requesting that the cost of the consultant be spread over the two years during which KCWA would expect the requested rates to be effective.¹³

Mr. Brown also addressed KCWA’s request for an allowance in rates for five (5) new employees. The first request is for a junior engineer with experience in Geographical Information Systems (“GIS”) and Computed Automated Design (“CAD”) to assist in the implementation of the new GIS system from the beginning and to continue

⁸ Id. at 4.

⁹ Pre-Filed Testimony of Timothy J. Brown, p. 3.

¹⁰ Id. at 4.

¹¹ Id.

¹² Id. at 4-5.

¹³ Id. at 5.

as the system grows.¹⁴ The second position is that of a plant operator for the new water treatment facility at Mishnock, starting in January 2002. He explained that although the plant was mostly automated, a human operator would still be essential during one shift per day.¹⁵ The third request is for an additional Dig Safe employee. Currently, there is one full time Dig Safe employee whose work is supplemented during the construction season with one to two field crewmembers. Dig Safe requests have a 48-hour mandatory response time, which, during the construction season, averages 50-60 calls per day. During the winter, this is reduced to approximately 12 calls per day.¹⁶ Finally, Mr. Brown explained that KCWA was requesting funding for two additional employees to create a separate maintenance crew, whose duties would be hydrant maintenance. The crew would be responsible for inspecting and flushing the system in the spring and fall, in order to avoid the assessment of penalties during fire department inspections. This would remedy the current lack of inspections by KCWA.¹⁷

Mr. Brown also discussed proposed changes in KCWA's reporting requirements. Currently, KCWA must report to the Commission three times per year regarding Infrastructure Replacement Program ("IFR"), Capital Improvement Program ("CIP") and restricted account balances. KCWA is proposing a change to semi-annual reporting and a change in format. Under its proposal, KCWA would only report on projects upon which work is being done and not on projects awaiting funding approval by the Commission.

¹⁴ Id. at 6.

¹⁵ Id. at 7.

¹⁶ Id. at 7-8.

¹⁷ Id. at 8.

However, the exact details of the format changes and nature of the reports would be something to be worked out in conjunction with the Commission.¹⁸

Mr. Brown also discussed the CIP, begun in 1988, by KCWA and revised periodically since then. The program still has the same historical goals. One addition is a new administration facility, proposed to replace the old one. He explained that according to a previous rate filing, KCWA undertook a complete study of the existing administration facility and found that it needed to be replaced.¹⁹ Furthermore, “a bond issue would need to be sold for the completion of the projects on the updated CIP.”²⁰

Mr. Arthur C. Williams provided pre-filed testimony regarding the account balances in the seven (7) accounts previously restricted by the Commission under prior orders. He testified that each of the accounts had been properly funded, that money from the accounts had been properly expended, and that the accounts were in compliance with the bond indenture and/or Commission Orders.²¹

Mr. John P. Ryan provided testimony regarding financing of KCWA’s pending projects, the costs of which total \$28,900,000. He testified that his calculations indicated that the total bonding requirements would be \$32,180,000. The annual gross debt service per fiscal year on this amount would be \$2,510,000. In addition, \$2,573,000 would be deposited into a required Debt Service Reserve Fund in order to assist in the repayment of the debt service. Mr. Ryan also noted that the recent decreases in interest rates make the present time a good one for borrowing money.²²

¹⁸ Id. at 10.

¹⁹ Id. at 11-13.

²⁰ Id. at 13.

²¹ Pre-Filed Testimony of Arthur C. Williams, pp. 2-3.

²² Pre-Filed Testimony of John P. Ryan, pp. 2-4.

Mr. John L. Keaney provided pre-filed testimony regarding the development and progress of KCWA's CIPs as they were created and revised since 1988.²³ Mr. Keaney provided testimony based on his role in updating and prioritizing the projects still to be completed from the 1993 CIP and 1995 report to the Commission regarding the 1993 CIP. He further testified regarding a proposed four-year CIP for Fiscal Years 2002-2005 that specifies particular programs for each year.²⁴

Mr. Keaney explained that there are thirteen (13) main projects in the CIP, some of which were broken down into smaller sub-projects. Each project is ranked in order of priority, within the general "order of priority [being] source of supply, storage, transmission, and distribution."²⁵

In Fiscal Year 2002, Mr. Keaney explained that the CIP projects include: (1) the Mishnock Wellfield Expansion; (2) the East Greenwich Well Upgrade; and (3) a New Kent County Water Authority Facility.²⁶ The Mishnock Expansion and East Greenwich Upgrade are considered high priorities because reliable sources of water are precursors to transmission and distribution.²⁷ A new administrative office facility for KCWA is third in priority for several reasons. There are building code and fire code violations. In addition, there is inadequate yard space for storage and parking and the staff has outgrown the current facility.²⁸

In Fiscal Year 2003, the proposed CIP projects include improvements to the Black Rock Road Area Transmission Main, the Knotty Oak Road Area Transmission

²³ Pre-Filed Testimony of John Keaney, pp. 3-4.

²⁴ Id. at 5.

²⁵ Id. at 6.

²⁶ Id. at 6-7; Testimony and Data in Support of the Kent County Water Authority's Rate Filing, Volume II, pp. 2-1 through 2-11.

²⁷ Prefiled Testimony of John Keaney, pp. 6-7.

²⁸ Id. at 7.

Main, the Watercross Court Transmission Main and the New Read School House Road High Service Area (“RSHR”) Tank and Main project. Specifically, the projects would include an increase in hydraulic grade line and operation of the RSHR to an elevation of 500 feet from 430 feet. This would provide for direct pumping from the Clinton Avenue facility rather than the Knotty Oak facility. Therefore, water would only flow through one pumping station and the pressure would be better regulated.²⁹

Project numbered Eight and Nine, proposed for Fiscal Year 2004, would be a continuation of transmission main improvements to the RSHR.³⁰ Specifically, project Nine, the Extension of High Service to the Oak Haven Manor Area, would alleviate the low-pressure issue in that area. Project Ten, a continuation of an earlier CIP project for improvements to the East Greenwich transmission mains, will be an extension of the main to provide service to East Greenwich neighborhoods.³¹

In Fiscal Year 2005, projects numbered Eleven, Twelve and Thirteen are proposed. Eleven includes improvements to the West Street Tank Area Water Mains, which will improve transmission capacity to this area.³² Twelve includes improvements to provide an interconnection between RSHR and the Technology Park High Service Areas to provide more flexibility of service during emergencies,³³ and finally, project Thirteen includes improvements to the Bald Hill Road Area Transmission Mains and demolition of three tanks.³⁴

²⁹ Id. at 11-12.

³⁰ Id.

³¹ Id. at 12.

³² Id. at 13.

³³ Id. at 12.

³⁴ Testimony and Data in Support of the Kent County Water Authority’s Rate Filing, Volume II, pp. 1-3 through 1-4.

In his initial pre-filed testimony, Christopher P.N. Woodcock testified to the cost of continuing the CIP.³⁵ He developed pro forma revenue requirements and the resulting cost allocations and proposed rates and charges. Mr. Woodcock concluded that KCWA needed to issue new debt in order to continue with its capital improvement programs to upgrade the supply and distribution systems. As a result, KCWA would need to increase revenue by approximately 27%.³⁶

Mr. Woodcock compared the test year of 2000 to the proposed rate year of 2002. He explained that the increase was due to: (1) the issuance of \$10 million of new bonds in 2001 and the refinancing of its existing debt, which will increase debt service by some \$425,000; (2) a new capital program that will necessitate an additional bond issue of \$32 million with an annual debt service requirement of approximately \$2.4 million; (3) an increase in labor costs of nearly \$243,000 over the test year costs; (4) other cost increases due to updating the Water Supply Management Plan, repayment of past license fees owed to the Department of Health, required additions to the Operation and Maintenance (“O&M”) Reserve and the Renewal and Replacement (“R&R”) Reserve.³⁷

Mr. Woodcock stated that he used the same cost allocation and rate design model that had been filed and accepted by the Commission in several prior dockets. He noted that due to changes in expenses, however, the resulting cost allocations would impact rate

³⁵ Mr. Woodcock provided two sets of pre-filed testimony. The revisions in his supplemental testimony are based on additional funds that were available to KCWA from certain restricted funds. According to Mr. Woodcock, his review after filing his initial first pre-filed testimony showed that certain additional funds would be made available prior to the rate year, which could be used to offset debt service costs and lower the deposits required to the Renewal and Replacement Reserve. Therefore, the increase in additional revenues was reduced by approximately \$409,000. Mr. Woodcock provided a complete set of new schedules with his supplemental testimony. Where different, the numbers relied upon in this Order have been taken from the revised testimony. See Supplemental Pre-Filed Testimony of Christopher P.N. Woodcock, pp. 1-2.

³⁶ Supplemental Pre-filed Testimony of Christopher P.N. Woodcock, p. 2.

³⁷ *Id.*, pp. 2-3.

classes and charges differently.³⁸ He also noted that the new rates will cause smaller volume customers to have smaller percentage increases but for larger volume customers the increases are essentially equal to the changes in the metered rate for that class.³⁹

In his supplemental pre-filed testimony, Mr. Woodcock that he found additional funds available for the rate year to offset debt service costs and required deposits to the R&R Reserve. First, Mr. Woodcock reduced the requested the revenue increase by \$55,000 because by December 31, 2001, KCWA will have an additional \$55,000 in the R&R Reserve Fund that can be used to offset the estimated requirement. Second, KCWA has collected \$353,206 in rates for the debt service on \$10 million in authorized bonds that were as yet unissued, the debt service to which was approved by the Commission in KCWA's last rate case. Applying these additional funds will reduce the requested revenue increase by \$409,000, thereby reducing the overall rate increase from 26.9% to 23.5%.⁴⁰

Division's Direct Testimony

After its review of KCWA's filing, on August 24, 2001, the Division of Public Utilities and Carriers ("Division") submitted the pre-filed Testimonies of Andrea C. Crane and Jerome Mierzwa, consultants to the Division, and Alberico Mancini, a Division engineer. The Division recommended KCWA be allowed to increase rates by \$1,096,707, or a 9.5% increase over test year.⁴¹

The Division presented the testimony of Ms. Crane, Vice-President of The Columbia Group, Inc., a financial consulting firm that specializes in utility regulation.

³⁸ Id. at 3.

³⁹ Id. at 9.

⁴⁰ Supplemental pre-filed testimony of Christopher P.N. Woodcock, pp. 1-2.

⁴¹ Division Ex. 1, Andrea C. Crane, pp. 5, 33.

With regard to KCWA's claim for regulatory fees, Ms. Crane made a slight adjustment reducing the annual allowance by \$3,760. She stated that she concurred with KCWA's proposal to base the annual allowance on a five-year average of regulatory costs incurred.⁴³

Addressing compensation to KCWA Board Members, Ms. Crane testified that she would not adjust their compensation or health care benefits in this rate filing, but recommended that, in the future the Commission should deny funding through rates of benefits costs or any other costs to Board members other than an appropriate level of Board meeting fees.⁴⁴ With regard to KCWA's calculation of regulatory fees, Ms. Crane adjusted the annual allowance to reflect a five-year average which she believed was a more accurate calculation of KCWA's actual regulatory expense.⁴⁵

KCWA currently provides medical insurance and an annual payment of \$3,000 to Board members. The total cost of benefits and stipends to the five Board members amounts to approximately \$50,000 annually. Ms. Crane noted that Board members were now classified as employees of the Authority, and that she found this to be an unusual practice. Although she acknowledged that some level of compensation for Board meetings is common for Board members, she intended that the payment of medical insurance was not a common practice.⁴⁶ Ms. Crane testified that she would not adjust the level of compensation and benefits for current Board members, but "in the future, I

⁴³ Id. at 15-16.

⁴⁴ Id. at 15-16.

⁴⁵ Id. at 17-18.

⁴⁶ Id. at 15-16.

recommend that the Commission deny the payment of benefit costs or of any other costs to Board members other than an appropriate level of meeting fees.”⁴⁷

Ms. Crane made adjustments to KCWA’s debt service claims based on the fact that KCWA has had a history of overestimating the amount of financing it will require and has been overly optimistic regarding the amount of construction that could be completed. Therefore, in the past, the Commission has approved rate increases based on projections that have never materialized. Ms. Crane recommended that KCWA’s request for a \$32 million bond issue be decreased to \$21 million, and that revenues associated with debt service on any new bonds be placed into restricted accounts. Furthermore, Ms. Crane recommended that in future rate cases, KCWA should be required to provide testimony of the impact of any requested new debt issuances on its financial integrity and capital structure and regarding its financial capacity for issuing new debt.⁴⁸

Addressing KCWA’s operating reserves and renewal and replacement reserves, Ms. Crane noted that the required reserves would be lower than requested as they are based on the pro forma total operating and maintenance expense. She also recommended that the reserve deficiencies be recovered over two years, rather than one.⁴⁹ Ms. Crane recommended that KCWA’s claim for an operating reserve allowance of \$124,678, be denied as serving the same purpose as the Operation and Maintenance reserve, which is funded at a level of approximately \$1.5 million.⁵⁰ With regard to a surplus in previously approved restricted accounts related to debt service, Ms. Crane recommended returning

⁴⁷ Id. at 15.

⁴⁸ Id. at 18-23.

⁴⁹ Id. at 23-5.

⁵⁰ Id. at 25-6.

the surplus to ratepayers over a two-year period rather than the three-year period requested by KCWA.⁵¹

Turning to pro-forma operating expenses, Ms. Crane indicated that although KCWA had seen a steady growth of customers over the most recent seven-year period, the rate filing did not reflect customer growth beyond the test year. Therefore, Ms. Crane recommended an increase of \$107,901 in pro forma operating revenue to reflect anticipated growth.⁵²

With regard to requested rate design and tariff changes, Ms. Crane argued that the proposed \$50 meter testing fee, the \$5 per foot of installed main inspection fee and the pass-through of legal costs for non-rate matters should be disallowed because, she maintained, no cost support had been provided by KCWA.⁵³ However, Ms. Crane had no objection to language that clarified the time during which a turn-on charge would be applied.⁵⁴

The Division also provided the testimony of Mr. Jerome Mierzwa, Vice-President of Exeter Associates, Inc., retained to assist the Division in evaluating the cost allocation and rate designed aspects of the KCWA's application for a rate increase.⁵⁵ Mr. Mierzwa noted that no changes had been made to the previously adopted cost of service study. It was his opinion that the cost allocation factors were still reasonable. However, he believed that a 60% increase for fire service was too high. He recommended an increase of "one and one-half times the system average increase authorized by the Commission,"

⁵¹ Id. at 26-7.

⁵² Id. at 27-30.

⁵³ Id. at 30-1.

⁵⁴ Id. at 32.

⁵⁵ Division Ex. 3, Direct Testimony of Jerome D. Mierzwa, pp. 1-3.

resulting in an increase of 14.28% increase on public and private fire service rates, based on the Division's revenue requirements.⁵⁶

The Division also submitted the pre-filed testimony of Mr. Alberico Mancini, a Division Engineering Specialist II. Mr. Mancini noted that in response to its system pressure problems, KCWA had embarked on an aggressive CIP program. He noted that with the issuance of \$26.5 million in bonds over the last seven years, KCWA had achieved significant improvements.⁵⁷ However, even with the improvements, Mr. Mancini noted that during peak demand periods, there are low water levels in KCWA's elevated high service storage tank. As a result, KCWA has plans for new construction to address the continuing low-pressure issues.⁵⁸ Mr. Mancini also indicated that in order to meet federal Safe Water Drinking Act standards that will be going into effect, KCWA needed to upgrade some of its facilities.⁵⁹ Also, KCWA will construct a new treatment facility (the Mishnock Water Treatment Plant) and upgrade its wells and transmission mains related to the plant at a cost of \$17.8 million. However, Mr. Manicini recommended that KCWA be allowed to fund these projects through a combination of debt service and Infrastructure Replacement Reserve funding. Finally, Mr. Mancini recommended KCWA defer construction of a new administrative facility.⁶⁰

Town of West Warwick's Direct Testimony

Mr. Wolfgang Bauer, Town Manager of the Town of West Warwick, intervened on behalf of the Town. On August 6, 2001, he filed direct testimony in this matter.⁶¹ On

⁵⁶ Id. at 4-5.

⁵⁷ Division Ex. 2, Direct Testimony of Alberico Mancini, pp. 2-4.

⁵⁸ Id. at 4.

⁵⁹ Id. at 4-7.

⁶⁰ Id. at 9.

⁶¹ West Warwick Ex. 1A, Pre-filed Direct Testimony of Wolfgang Bauer.

August 23, 2001, he filed supplemental direct testimony.⁶² The Town of West Warwick first addressed the issue of KCWA's proposed increase in rates to maintain fire hydrants. Mr. Bauer argued that the increase represented a 59% increase from the Town's 2000 budget for hydrant fees. Mr. Bauer pointed out that the Town's taxpayers are ultimately responsible for the payment of the fees charged by KCWA. He also noted that the Town was limited to a 5.5% increase in taxes. Therefore, the increase in hydrant fees would have a significant impact on West Warwick's taxpayers.⁶³

Mr. Bauer also expressed concern with regard to the phase-in aspect of the CIP projects. He suggested that, rather than impacting all customers, the KCWA consider a separate capital charge for all new customers placing new demands on the water system. This "buy-in" would help share the system costs and create a fund for capital construction.⁶⁴

Mr. Bauer also suggested that the KCWA structure a rate increase over a period of more than one year in order to ease the impact on customers. He believed that such a structuring of a rate increase could also reduce the frequency of rate filings and therefore, also reduce some of the costs associated with such filings.⁶⁵ Finally, with regard to the construction of a new administration building for the Authority, Mr. Bauer believed that this project should have a lower priority than projects addressing the health and safety issues relating to water supply and distribution.⁶⁶

KCWA Rebuttal

⁶² West Warwick Ex. 1B, Supplemental Pre-filed Direct Testimony of Wolfgang Bauer.

⁶³ West Warwick Ex. 1A, pp. 2-4, West Warwick Ex. 1B, p. 1.

⁶⁴ West Warwick, Ex. 1B, pp. 1-2.

⁶⁵ Id. at 2.

⁶⁶ Id.

On October 1, 2001, KCWA filed the Rebuttal Testimony of Mr. Brown, Mr. Woodcock and Maureen E. Gurghigian, successor to Mr. Ryan.

Mr. Brown expressed concern with a portion of Mr. Mancini's testimony regarding the need for a new administrative facility because Mr. Mancini had not indicated for how long the project should be deferred. Mr. Brown argued that, contrary to Mr. Mancini's position, he did not believe IFR funds could be used to pay for projects within the CIP program because they had not been included when the IFR plan was originally approved.⁶⁷ Next, Mr. Brown indicated that, while he did not object to Mr. Mierwza's suggestion to phase-in increases to fire protection charges, he was concerned that if they were phased in too slowly, KCWA would always be in the position of having to "catch up" on the lost revenues.⁶⁸ Mr. Brown also disagreed with Ms. Crane's testimony recommending reduction or disallowance of KCWA requests, contending that her positions were somewhat arbitrary.⁶⁹

Finally, Mr. Brown provided further explanation regarding the miscellaneous tariff adjustment that Ms. Crane recommended be denied for lack of supporting information. He explained that including the \$50 meter test fee would simply codify the amount currently charged by KCWA for meter testing. It included the staff time to remove, test and reinstall a meter at a home. With regard to the \$5 per foot inspection fee for new mains, Mr. Brown indicated that it was being proposed to offset some of the costs incurred by KCWA when inspecting a new main. It was his position that it was appropriate that the person requesting the service would pay the charge. Finally, Mr. Brown stated that KCWA believes it is unfair for all customers to pay for charges to

⁶⁷ KCWA Ex. 8, Rebuttal Testimony of Timothy J. Brown, pp. 1-4.

⁶⁸ Id. at 4.

In response to the Division's testimony, Mr. Woodcock stated that a phase-in of increases to fire protection charges would be acceptable. Mr. Woodcock disagreed with the complete elimination of funds for the Water Supply Plan. He also stated that the volume of purchased water from Providence should be set at 2.8284 billion gallons. Mr. Woodcock stated that \$46,168 provided for inflation should be kept in the revenue requirements. As to the Division's recommendation to reduce salaries and wages, Mr.

Division's Surrebuttal

On October 19, 2001, the Division filed the Surrebuttal testimony of Andrea Crane and Alberico Mancini. Ms. Crane testified that after reviewing KCWA's Rebuttal testimony, she had not changed her recommendations with regard to the following: (1) the purchase of water from Providence Water Supply Board; (2) the hiring of new employees; (3) increases for inflation; (4) recovery of reserve deficiencies; (5) funding of the Water Supply System Management Plan; and (6) funding of an Operating Revenue allowance. In addition, Ms. Crane testified that KCWA and the Division were in agreement regarding debt service for existing debts and recovery of licensing fees and regulatory fees.

Ms. Crane testified that although KCWA had reduced its request for a bond issuance from \$32.15 million to \$26.99 million, she continued to recommend a bond issuance of \$21 million based on her direct testimony.⁷⁴ With regard to debt service for KCWA's existing debt, she noted that the Division and KCWA were in agreement.⁷⁵ However, with regard to the amortization of restricted funds available to help offset this debt service, Ms. Crane testified that a three-year amortization period was still too long and she continued to maintain that two years was more appropriate.⁷⁶

Addressing the issue of new employees, Ms. Crane indicated that while KCWA had revised its request down to four employees instead of five, the schedules provided by Mr. Woodcock only reflected funding for two new employees. Since the Division was recommending funding for two new positions, Ms. Crane deduced that the Division and

⁷⁴ Id. at 3.

⁷⁵ Id.

⁷⁶ Id. at 3-4.

KCWA were in agreement.⁷⁷ She noted that KCWA's increased claim for pension expenses was acceptable to the Division.⁷⁸

Despite KCWA's adjustment to fund the costs for revising its Water Supply System Management Plan over five years rather than two, Ms. Crane maintained her assertion that the claim should be disallowed as the costs would not be incurred in the rate year. Moreover, Ms. Crane testified, the IFR fund, in addition to being the appropriate place from which to draw the money, contained sufficient funds from which to do so.⁷⁹

Addressing the tariff changes to the meter test fee and line inspection fees, Ms. Crane indicated that with regard to the former, KCWA had raised an issue as to whether the charges had been appropriate in the past. With regard to the latter, Ms. Crane testified that KCWA had not provided any analysis to indicate the costs for the services, how the fees relate to the costs and what additional revenue KCWA would receive as a result of the changes.⁸⁰

Finally, with regard to Ms. Gurchigian's claim that the reserve account deficiencies needed to be funded at the end of each year in order to be in compliance with the bond documents, Ms. Crane stated that the language required KCWA to use its best efforts and take all legal action required to restore the reserves. It was Ms. Crane's position that if the Commission were to order the deficiencies be recovered over two years, as was her recommendation, KCWA would still be in compliance with the

⁷⁷ Id. at 4.

⁷⁸ Id.

⁷⁹ Id. at 5-7.

⁸⁰ Id. at 9.

requirement that it use its best efforts to restore the deficiencies in the accounts.⁸¹ As a result of adjustments made in her Surrebuttal testimony, Ms. Crane's revised revenue requirement increase for KCWA was \$1,498,083, or a 13% increase over pro forma revenues at present rates.

Mr. Alberico Mancini testified that he still believed that, contrary to Mr. Brown's position, there were funds available in KCWA's IFR account to fund additional projects.⁸² Relying on Ms. Crane's testimony, Mr. Mancini indicated that there was a \$2.7 million projected balance in the IFR account at December 31, 2002.⁸³ He believed Mr. Brown was mistaken in his claim that KCWA could not alter an approved IFR plan without resubmitting it for review by various state agencies. Mr. Mancini stated that after talking with a representative from the Department of Health, it was his understanding that KCWA could alter its IFR plan to include additional projects contained within the CIP plan.⁸⁴ Finally, Mr. Mancini testified that the Division did not anticipate any adverse effect on the IFR program from funding other CIP projects.⁸⁵

Public Comment

Following notice, hearings were conducted at the offices of the Commission and at West Warwick High School on August 1, 2001 for the purpose of taking public comment on the rate filing. The Commission heard from thirteen individuals. Much of the testimony received related to prioritizing capital projects for which additional revenues would be required. The public generally understood that an increase would be

⁸¹ Id. at 9-10.

⁸² Division Ex. 5, Surrebuttal Testimony of Alberico Mancini, p. 1.

⁸³ Id.

⁸⁴ Id. at 2.

⁸⁵ Id.

necessary, but they believed some projects were excessive at this time, namely, the new administrative building.

Mr. Thomas Jones and Mr. Joseph Maraia testified before the Commission regarding new connections issues. Their complaints alleged that KCWA was turning down applications for new connections in certain locations based on a lack of water pressure, and that KCWA was seeking to charge new connection applicants with the costs of providing the connection. Additionally, Mr. Jones opposed the proposed hydrant rates and expressed concerns regarding KCWA's compliance with the Rhode Island Public Records Laws.

On October 29, 2001, the first scheduled day of evidentiary hearings on KCWA's filing, again heard public comment from Mr. Jones, who reiterated his concerns regarding KCWA's compliance with the Rhode Island Public Records laws. The parties then advised the Commission that they were close to working out terms of a settlement regarding the rate filing. KCWA and the Division subsequently reached an agreement on KCWA's rate filing, and on October 31, 2001, they jointly filed a Settlement Agreement ("Settlement") with the Commission.

Hearing on Settlement

The Commission reconvened to hold a hearing on the proposed Settlement at the offices of the Commission, 89 Jefferson Boulevard, Warwick, Rhode Island on October 31, 2001. The following appearances were entered:

FOR KCWA:	Frank Flaherty, Esq.
FOR THE DIVISION:	Leo Wold, Esq. Special Assistant Attorney General

FOR THE COMMISSION:

Cynthia G. Wilson, Esq.
Senior Legal Counsel

Prior to hearing testimony on the Settlement, the Commission called Joseph Gallucci, Chairman of the KCWA Board, to testify. Under questioning by the Commission, Mr. Gallucci testified that all of the Board members were customers of the KCWA.⁸⁶ In addition, Mr. Gallucci testified that he worked 20-25 hours per week performing duties as a member of the KCWA Board, attending various meetings, addressing constituent concerns and reviewing mail.⁸⁷ Additionally, Mr. Gallucci testified to the procedure regarding applications for new service.⁸⁸

At the conclusion of Mr. Gallucci's testimony, KCWA called Mr. Joseph McGair, Esq., counsel to KCWA, to testify regarding the allegations made that KCWA was not in compliance with the Rhode Island Public Records Laws.⁸⁹ Mr. McGair provided the Commission with clarification of the circumstances surrounding the dispute with Mr. Jones over KCWA's compliance with the Public Records Laws.⁹⁰ He explained that due to requests for voluminous records, KCWA required pre-payment of the estimated cost for retrieving records. However, the costs imposed did not exceed the statutory amount allowed.⁹¹ Furthermore, it was his opinion that KCWA provided the records within a reasonable time of the requests, given the sweeping nature of some of the requests.⁹²

Following Mr. McGair's testimony, KCWA and the Division presented their witnesses to testify to the terms of the Settlement. KCWA acknowledged that the

⁸⁶ See Tr. 10/31/01, p. 25.

⁸⁷ Tr. 10/31/01, pp. 27-8.

⁸⁸ Id. at 36-42.

⁸⁹ See R.I.G.L. § 38-2-1 et seq.

⁹⁰ Id. at 45-77.

⁹¹ Id. See KCWA Ex. 12, Documentation regarding access to public records. See also R.I.G.L. § 38-2-4.

⁹² Tr. 10/31/01, pp. 51-7.

Settlement did not address the requested tariff changes regarding meter testing, line inspection and legal fees. Mr. Brown explained that with regard to the meter testing fee, KCWA had been charging the shut-off fee of \$50 because the actions taken for meter testing were most similar to those involved in shut-offs.⁹³ The witnesses for both KCWA and the Division agreed that even if the procedure had been inappropriate, any penalty the Commission may impose would only affect the ratepayers, given the fact that KCWA is not a shareholder owned company.⁹⁴ With regard to the proposed inspection fee and pass-through of legal fees, Mr. Brown explained that the fee was being proposed to appropriately charge the customer benefiting from the work. For example, he indicated that if a developer was asking KCWA to incur legal fees with regard to easements, that developer should bear the cost of the work.⁹⁵

In the Settlement, the parties agreed to a net annual revenue increase of \$1,820,684, or an increase of 15.88% over KCWA's present rate revenues. The Settlement provides for a total cost of service of \$13,956,116. The parties agreed that the rate increase would "principally be utilized to service approximately \$24.7 million of anticipated debt..."⁹⁶ The parties also agreed to allow KCWA to fund compensation for two new employees through the increase in rates.⁹⁷ The impact of the rate increase on an average residential bill of 2,500 cubic feet would be an increase of \$75.90 per quarter or 14.7%.⁹⁸

In the Settlement, the parties agreed to allow KCWA to combine the funds in the five separate restricted accounts into a single restricted capital account beginning on

⁹³ Id. at 92.

⁹⁴ Id. at 92, 95-8.

⁹⁵ Id. at 93.

⁹⁶ Joint Ex. 1, p. 2.

January 1, 2002, with an annual funding level of \$7,685,867.⁹⁹ The parties explained that KCWA would still be required to account for the funds as if there were five separate accounts, but would be able to move funds from one restricted account to another depending on the required funding level each year. In other words, because the reserve accounts are funded according to a formula set forth in the bond documents, under the traditional separate accounts approach, one may be over funded while another is under funded. Combining the restricted funds allow KCWA the flexibility of appropriately funding each restricted account, while any excess in restricted receipts would be deposited in the Stabilization Account in accordance with the terms of the General Bond Resolution.¹⁰⁰ At the hearing, the Commission expressed concern that while KCWA may need some flexibility in managing its restricted accounts, there should be some limitations on the use and transfer of the money in the overall restricted accounts.¹⁰¹ As a result of the Settlement, the following accounts will remain restricted: Debt Service--\$4,034,585; IFR -- \$3,400,000; Renewal & Replacement, Equipment --\$100,000; O&M Reserve \$35,562; and R&R Reserve --\$115,720.

Addressing the issue of the current excess in KCWA's Restricted Debt Service Account, the parties to the Settlement agreed that the \$1,199,953 would be amortized over two years to reduce the revenue requirement each year. The parties also indicated that at the end of the two-year period, an increase of \$599,977 would be necessary. Therefore, KCWA would make a compliance filing by September 1, 2003 in order to request this increase (if, in the interim, however, the Commission were to issue a rate

⁹⁷ Id.

⁹⁸ Tr. 10/31/01, p. 90.

⁹⁹ Joint Ex. 1, pp. 2-3.

¹⁰⁰ Tr. 10/31/01, pp. 101-10.

order in another rate filing, with the exception of a pass-through filing, the increase would not be required). The Division reserved its right to object to the increase. However, there was nothing in the language that required the Division to file a position with the Commission and nothing that required the Commission to issue a new order in 2003.¹⁰² At the hearing, the Commission expressed concern that it was being asked to give advance approval to an automatic rate increase which would occur some two years in the future.¹⁰³

In the Settlement, the Division acknowledged that KCWA's administrative offices were inadequate and that KCWA raised a legitimate concern regarding their adequacy. However, KCWA agreed to withdraw its request for funding of CIP Project 3, the construction of a new administrative building, estimated to cost \$4,612,500. The Division reserved its right to contest the need for the offices in the future.¹⁰⁴ Additionally, KCWA withdrew its request for bond funding of CIP Project 5, the Knotty Oak Road Area Transmission Main, estimated to cost \$2,261,100.¹⁰⁵ As a result of the withdrawal of these two projects from the CIP, the New Debt Service of KCWA would receive funding of \$1,798,000, a \$192,000 decrease from KCWA's Rebuttal Position.¹⁰⁶

The Settlement summarized the remaining terms as follows: (1) the IFR Account would be reduced annually from \$3,500,000 to \$3,400,000; (2) the Renewal and Replacement Account would be reduced annually from \$175,000 to \$100,000; (3) funding would be allowed for a Dig Safe Employee and Junior Engineer; and (4) "the rates were designed in accordance with the cost of service study except that rates for all

¹⁰¹ *Id.* at 119-122.

¹⁰² Joint Ex. 1, pp. 3-4.

¹⁰³ Tr. 10/31/01, pp. 124-27.

¹⁰⁴ Joint Ex. 1, p. 4.

public and private fire service charges [would] be increased at 1.5 times the overall increase]...The shortfall in revenues due to the reduced fire service rates [would] be made up through an increase to the metered water rates.”¹⁰⁷

At the conclusion of the hearing, the parties agreed to further address the concerns expressed by the Commission by amending the language of paragraphs 5-6 of the Settlement.¹⁰⁸

Amended Settlement

On November 27, 2001, the Parties filed an Amended Settlement Agreement (“Amended Settlement”) with the Commission.¹⁰⁹ In response to the concerns expressed by the Commission regarding the treatment of excess restricted receipts, the parties enumerated the purposes for which the excess receipts could be used once deposited in the Stabilization Account.¹¹⁰ Specifically, in accordance with the bond documents, the funds in the Stabilization Account shall only be used (1) to fund shortfalls in the Debt Service Account of the Debt Service Fund; (2) to fund shortfalls in the Debt Service Reserve Fund; (3) to fund capitalized interest and Debt Service Reserve Fund requirements on a future series of Bonds, as requested by the Authority; (4) to fund the Redemption Fund, as requested by the Authority; and (5) for other purposes expressly approved by the Commission to be funded through the Stabilization Account.¹¹¹

In response to Commission concern that it was inappropriate for it to pre-approve of a rate increase that would not go into effect for two years, the parties amended the

¹⁰⁵ Id. This project was transferred to the IFR program to be funded with “pay as you go” funds.

¹⁰⁶ Id.

¹⁰⁷ Id. at 4-5.

¹⁰⁸ Tr. 10/31/01, p. 163-65.

¹⁰⁹ A copy of the Amended Settlement and Revenue Requirement Summary is attached as Appendix A hereto and incorporated by reference herein.

¹¹⁰ Amended Settlement, p. 3.

language of the Settlement to require the Division to make a recommendation to the Commission when KCWA files for the \$599,977 increase for effect in 2004. In addition the KCWA will request that the Commission decide at an open meeting whether to accept the filing or to hold hearings and issue an order no later than December 15, 2003. Finally, the parties agreed that no new rates would be put into effect without a Commission order.¹¹²

Commission Findings

At an open meeting conducted on December 13, 2001, the Commission considered the evidence presented in the case and found that the Amended Settlement, filed on November 27, 2001, was just and reasonable and in the best interest of ratepayers. In particular, the Commission approved the revenue increase of \$1,820,684, or 15.8%, for a total cost of service of \$13,956,116.

The Commission also addressed several of the issues raised during Public Comment. The Commission notes that several ratepayer concerns may be avoided in the future through improved customer relations. With regard to the KCWA's compliance with the Rhode Island Public Records Law, the Commission finds that KCWA provided adequate assurances to the Commission that it was complying with the requirements. However, the Commission urges KCWA to implement policies that protect the Authority from the appearance of impropriety.

The Commission finds that, while not addressed in the Amended Settlement, the request by KCWA that it be allowed to make its compliance filings on a semi-annual basis in lieu of the current three times per year is reasonable. In addition, KCWA's

¹¹¹ Id. at 3.

¹¹² Id. at 3-4.

request for approval of a tariff to cover meter testing fees, another for inspection of installed main and another to pass through legal fees for non-rate matters to the requesting party is reasonable.

Finally, the Commission concurs with Ms. Crane that, on a going forward basis, the Commission should review the appropriateness of funding through rates the health benefits that are being paid by KCWA on behalf of members of its Board. We direct that in future rate filings, KCWA file detailed information on the annual cost of stipends and benefits for Board members. Further, we put KCWA on notice that the level of benefits paid to Board members in the future will be reviewed to ensure that they are in line with the level of such costs incurred by similar Boards.

Accordingly, it is

(17024) ORDERED:

1. The March 30, 2001 rate application filing, as amended on April 16, 2001, by the Kent County Water Authority is hereby denied and dismissed.
2. The Amended Settlement Agreement filed on November 27, 2001, between the Kent County Water Authority and the Division of Public Utilities and Carriers, providing for a revenue increase of \$1,820,684 and a total cost of service of \$13,956,116, is hereby approved.
3. The rates reflected in the Amended Settlement Agreement are approved for consumption on and after January 1, 2002.
4. The request for instituting a Tariff to cover a \$50 fee for meter testing is hereby approved.

5. The request to institute a Tariff covering a \$5 per foot inspection fee on installed main is hereby approved.
6. The request to institute a Tariff to pass through legal fees for non-rate matters is hereby approved.
7. The Kent County Water Authority shall comply with the reporting requirements set forth in this Report and Order, and furthermore shall abide by all other terms and conditions imposed by the Amended Settlement Agreement and by this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND, ON DECEMBER 13, 2001,
PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED
JUNE 6, 2002.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner

and by the aid of its staff and two outside, expert consultants, Andrea C. Crane and Jerome D. Mierzwa.

3. After due consideration of the testimony, exhibits and other documentation included in the filings of the Authority, the Division, and the other parties, the Authority and the Division have now agreed to a comprehensive settlement which resolves all issues relating to the Authority's application. The Authority and the Division believe that this settlement, as a whole, constitutes a just and reasonable resolution of the issues in this proceeding, and jointly request its approval by the Commission.

II. TERMS OF SETTLEMENT

1. The Authority is authorized to adjust rates as of January 1, 2002 to obtain an amount not to exceed an additional \$1,820,684 of revenues (or 15.88% of normalized test year revenues) which will principally be utilized to service approximately \$24.7 million of anticipated debt (referred herein to as "Bonds"), along with funding two additional positions. The Bonds will be issued in order to finance the design and construction of capital improvement projects ("CIP").

2. The Authority's revenue requirements for all items, including debt service, is set forth in Schedule 1. No rate increase other than what is outlined in Paragraph Nos. 1 & 5 is required.

3. Except as required by bond covenants, all restricted capital accounts (*i.e.*, *debt service, O&M and R&R reserves, Infrastructure Replacement, and Renewal and Replacement*) currently maintained by the Authority shall be maintained in a single, restricted capital account commencing January 1, 2002. This restricted account shall be

funded at an annual level of \$7,685,867. Funds contained in account may be used for the following purposes:

- a. Deposits to the Debt Service Fund for payment of principal of interest on bonds;
- b. Deposits to the Operation and Maintenance Reserve Fund;
- c. Deposits to the Renewal and Replacement Reserve Fund;
- d. Deposits to the Renewal and Replacement fund up to \$100,000 annually; and
- e. Deposits to the Infrastructure Replacement (“IFR”) fund up to \$3,400,000 annually in accordance with the IFR Plan approved by the Rhode Island Department of Health.

4. Should funds available for deposit to the Debt Service Fund, Operation and Maintenance Reserve Fund, or Renewal and Replacement Reserve Fund exceed the amounts required in any given year, any excess restricted receipts shall be deposited in the Stabilization Account in accordance with the Authority's General Bond Resolution.

Funds in the Stabilization Account shall be used only for the following purposes:

- a. To fund shortfalls in the Debt Service Account of the Debt Service Fund;
- b. To fund shortfalls in the Debt Service Reserve Fund;
- c. To fund capitalized interest and Debt Service Reserve Fund requirements on a future series of Bonds, as requested by the Authority;
- d. To fund the Redemption Fund, as requested by the Authority; and
- e. For other purposes expressly approved by the Commission to be funded through the Stabilization Account.

5. The Authority has an excess of approximately \$1,199,953 in its Restricted Debt Account. These funds shall be used to reduce the revenue requirement of \$13,887,612 over two years. To reflect the termination of the flowback of these funds

after two years, the Parties believe that an increase in rates of \$599,977 will be necessary commencing January 1, 2004. Therefore, the Authority shall make a compliance filing on or before September 1, 2003 with respect to the aforementioned need for additional rates. The Division shall file a recommendation with the Commission on or before October 1, 2003. The Authority will request that the Commission decide at an open meeting, whether to accept the filing or hold hearings and will further request that the Commission issue a written order with respect to this request no later than December 15, 2003. The Parties agree that no new rates will go into effect without a Commission order. Furthermore, should the Commission issue a rate order in another rate case of the Authority, other than an order in a pass through filing, prior to January 1, 2004, the proposed increase and accompanying procedural provisions contained in this paragraph shall be null and void.

6. The Division acknowledges the Authority's concern that its offices located at 1072 Main Street in West Warwick are inadequate and agrees that the Authority has raised a legitimate issue with regard to the adequacy of its offices and administrative facility. The Authority, however, agrees to withdraw its request for funding the construction of a new facility (Project 3), estimated by Camp, Dresser & McKee ("CDM") in its Updated CIP (March, 2001) at \$4,612,500. No portion of the Bonds shall be used for this purpose. In a future filing, the Division reserves all rights to contest the adequacy of the Authority's offices and administrative facility.

7. The Authority agrees to withdraw its request for bond funding the Knotty Oak Road Area Transmission Main (Project 5), estimated by CDM in its Updated CIP (March 2001) at \$2,261,100. No portion of the Bonds shall be used for this purpose.

8. As a consequence of the withdrawal of Projects 3 and 5, effective January 1, 2002, new debt service of the Authority shall receive funding of \$1,798,000, a \$192,000 decrease from the Authority's Rebuttal Position.

9. Other principal terms of this settlement are as follows:

- a. The Authority agrees that the IFR Account shall be reduced by an amount of \$100,000 annually from \$3,500,000 to \$3,400,000;
- b. The Authority agrees the Renewal and Replacement Account shall be reduced by an amount of \$75,000 annually from \$175,000 to \$100,000;
- c. The Division agrees that the Authority will receive funding for two new positions: (i) a Dig Safe Employee and (ii) a Junior Engineer; and
- d. The rates agreed to by the Parties are outlined on Schedule 9. The rates are designed in accordance with the cost of service study except that rates for all public and private fire service charges shall be increased at 1.5 times the overall increase (approximately 23.8%). The shortfall in revenues due to the reduced fire service rates is made up through an increase to the metered water rates.

III. EFFECT OF SETTLEMENT

1. This Settlement Agreement is the result of a negotiated settlement. The discussions which have produced this Settlement Agreement have been conducted with the explicit understanding that all offers of settlement and discussion relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting such offer or participating in any such discussion, and are not to be used in any manner in connection with these or other proceedings.

2. The agreement by any party to the terms of this Settlement Agreement shall not be construed as an agreement as to any matter of fact or law beyond the terms thereof. By entering into this Settlement Agreement, matters or issues other than those

explicitly identified in this agreement have not been settled upon or conceded by any party to this Settlement Agreement, and nothing in this agreement shall preclude any party from taking any position in any future proceeding regarding such unsettled matters.

3. In the event that the Commission rejects this Settlement Agreement, or modifies this agreement or any provision therein, then this agreement shall be deemed withdrawn and shall be null and void in all respects.

IN WITNESS WHEREOF, the Parties agree that this Settlement Agreement is reasonable, in the public interest and in accordance with law and regulatory policy, and have caused this agreement to be executed by their respective representatives, each being authorized to do so.

Dated at Providence this 26 day of November, 2001.

KENT COUNTY WATER
AUTHORITY
By its attorney,

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DIVISION OF PUBLIC UTILITIES
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