STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE: KENT COUNTY WATER AUTHORITY ABBREVIATED APPLICATION TO CHANGE RATE SCHEDULES — DOCKET NO. 2860

REPORT AND ORDER

On December 30, 1998, the Kent County Water Authority ("Authority"), a non-investor-owned utility, filed with the Public Utilities Commission ("Commission") an abbreviated rate application pursuant to Rule 2.10 of the Commission's Rules of Practice and Procedures ("Rules").[1] The Authority requested a rate increase of 9.7% for the collection of additional operating revenues in the amount of $898,044, effective January 30, 1999.[2] The impact on an annual bill of a typical residential customer with a consumption level of 10,000 cubic feet ("HCF") was estimated to be $16.68 or 7.5%.

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[1] Under Rule 2.10(b), an abbreviated rate filings are available only under limited circumstances:

> The allowable revenue increase will be limited to twenty-five (25%) percent over a normalized test year period. Increases to test year amounts will be allowed for known and measurable changes to:
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> (1) debt service requirements;
> (2) salaries, wages, and employee benefits;
> (3) property taxes;
> (4) chemicals;
> (5) insurance;
> (6) infrastructure replacement program funding; and
> (7) purchased water.
>
> For other accounts, increases from test year amounts for known and measurable changes will be allowed only when the proforma amount is at least ten (10%) percent greater than the test year. Account increases utilizing a general attrition or inflation factor will not be permitted.

[2] See Joint Ex.1, Schedule 1 containing the Authority's Revenue Requirement Summary, the Division's recommended adjustments, and the agreed to position.

Municipal and private fire rates would increase by 28.78% and 26.34%, respectively.[3] Impact on other customer categories varied by rate class and level of consumption. The Authority sought to maintain its current rate structure consisting of three uniform commodity rates that vary by meter size.

Responding to the filing, the Division of Public Utilities and Carriers ("Division") conducted an investigation of the Authority's proposed rate increases through two sets of data requests,[4] as well as the review of its expert consultants, E. Charles Wunz, P.E.,

FOR THE COMMISSION: Adrienne G. Southgate
General Counsel

I. Authority Testimony.

During the hearing, the Authority called Timothy J. Brown, General Manager/Chief Engineer for the Authority.[6] In his prefiled testimony, Mr. Brown described the Authority's total water sales for the last five fiscal years, as well as the Authority's water system.[7] According to Mr. Brown, the Authority elected to make an abbreviated rate filing, reasoning that the rate increases it requested were for debt service previously approved in Docket No. 2098 and did not exceed the limitation of 25% of the normalized test year for revenue increases.

Mr. Brown summarized the Authority's recent regulatory activity. In December, 1993, the Authority was granted rate increases to service $26.5 million in new debt in Docket No. 2098. However, only $16.5 million in bonds were floated in the "1994 Bond Issue." After investigation, the Commission reduced the Authority's debt service allowance that was provided in rates for the remaining unissued $10 million in bonds.[8]

The Authority is now seeking a rate increase to fund $10 million in debt to enable it to continue with the Capital Improvement Projects ("CIP") currently under design, including ground storage tanks, transmission lines, wells, and a water treatment facility, and to expand its high service[9] area. The Authority states that it intends to decrease its

[6] See Authority Ex. 1, p. 1.

[7] Ibid., p. 2.

[8] Ibid., p. 3.

[9] A "high service area" is the highest pressure gradient within the water system (overflow, 500 feet).

dependency on the Providence water supply because in the long run, it is more cost-effective for the Authority to produce its own water.[10] The Authority is also requesting a previously-approved final ramp-up of $1 million in pay-as-you-go funding for Infrastructure Replacement ("IFR") projects.[11] This would increase IFR funding to $3,500,000 at January 1, 2000.

Under cross-examination, Mr. Brown discussed the preliminary plans for the water treatment plant, specifically addressing issues of radon regulation. The Environmental Protection Agency's ("EPA") final ruling on radon regulation is not due to be released until August, 2000. Mr. Brown conceded that he did not know what the acceptable radon levels would be, or when the standards would actually be issued by the EPA.[12] However, he disagreed that it was impossible to design a treatment plant until the EPA established radon limitations. Mr. Brown argued that treatment plants would have months, possibly years, to add radon removal capability. Thus, the Authority's current preliminary plans for the treatment plant do not provide for radon removal.[13] Mr. Brown maintained that he was aware of the EPA's thinking on the radon issue, due to his involvement in radon focus groups for the American Water Works Association.[14]

Mr. Brown was extensively queried on the timing of the design and construction phases of the Authority's capital projects. He testified that the approval of the state

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[10] See Authority Ex. 1, p. 5.

[11] Ibid., pp. 6-7; see also Docket No. 2555.

[12] See T. 4/26/99, p. 26.

[13] Ibid., p. 33.

[14] Ibid., p. 107.

Water Resources Board's ("WRB") Big River project[15] might result in modifications to CIP projects 14 through 19.[16] Mr. Brown further acknowledged that many of the Authority's proposed plans did not include dates for the initiation and completion of the final design and construction phases. The Division was concerned about the possible disparity between the issuance of the bonds and actual construction of the capital projects, arguing that customers who absorb the rate increases imposed to pay debt service on the bonds may not benefit from delayed infrastructure improvements which require the financing. Moreover, Mr. Brown conceded under cross-examination that costs could change as projects proceed from design to construction.[17]

Mr. Brown testified that CIP projects 14 through 19[18] were crucial for the full utilization of projects 28, 29 and 30.[19] It was not in the ratepayers' best interest to under-

[15] The WRB is considering the development of a series of groundwater wells within the area originally taken for the Big River Reservoir. The Authority and the WRB have been in discussions regarding this project, and how it could be coordinated with the Authority's CIP plans. See Division Ex. 13.

[16] See T. 4/26/99, p. 40.

[17] Ibid., p. 103.

[18] These projects are designed to decrease the Authority's dependence upon the Providence Water Supply: Project 14 is the Hopkins Hill Road Ground Storage Tank and Well Treatment Facility; Project 15, the transmission main from the Hopkins Hill Road Ground Storage Tank to Tiogue Avenue; Project 16, development of the new Mishnock Wellfields; Project 17, well water lines on Mishnock Road from the new wells to the treatment facility, and a well water line from Nooseneck Hill Road to Mishnock Road from the existing Mishnock wellfields; Project 18, upgrading the existing Mishnock Wellfields and possibly drilling of a new well; and Project 19, transmission from the Hopkins Hill Road Storage Tank to the Johnsons Boulevard Pumping Station and thence along Tiogue Avenue from South Main Street to Pilgrim Avenue.

[19] Project 28 is the water line from Hopkins Hill to Division Road; Project 29 is a transmission line from Division Road to Middle Road; and Project 30 is a new East Greenwich Storage Tank.

utilize tank capacity, therefore, the witness argued, all the projects should be built together.[20] However, the Authority did not make consumption forecasts to support the proposed CIP projects, because the need for such projects is not driven by anticipated demand growth but rather by the Authority's desire to reduce its dependency on the Providence water supply by developing its own wells.[21]

Mr. Brown disagreed with the Division's suggestion that Value Engineering be incorporated into the Authority's design process. He claimed that the additional expense is unjustified because the treatment plant is fairly simple.[22]

The Authority only issued $16.5 million of the bonds approved under Docket No. 2098, because it reprioritized the CIP projects.[23] Mr. Brown testified that it is in the best interest of the ratepayers to pre-approve the new bond funds because construction of the facilities would then be guaranteed.[24] Despite its existing $5.6 million capital projects fund balance, the Authority fears there will be a regulatory funding lag and it will be unable to proceed with its designs if approval of additional bond funds is not in place.[25]

The Authority called Arthur Williams, its Director of Administration and Finance. Mr. Williams testified that while the Authority was hoping to begin construction of

[20] Ibid., p. 168.

[21] Ibid., p. 169.

[22] Ibid., pp. 60, 121.

[23] Ibid., p. 65.

[24] Ibid., p. 88.

[25] Ibid., p. 114.

"some of the programs" by the year 2000, this timeline was simply an estimate.[26]

Also testifying on behalf of the Authority was its consultant, Christopher P.N. Woodcock, who concluded that the Authority needed a rate increase for the year beginning July 1, 1999 to provide debt service on a proposed additional $10,000,000 bond issue. He testified that the increase was also needed for IFR projects, increases in Renewal and Replacement ("R&R") and O&M reserve accounts, increases in chemical costs needed in connection with developing well water supplies, increases in labor costs, and purchasing new property for wells and storage facilities.[27]

The Authority requests funding prior to the bond sales because, in order to sell the bonds, the Authority must have sufficient authorized annual revenues to pay off the new debt and meet certain covenants enumerated under the Authority's general bond resolution.[28] In effect, rates providing sufficient annual revenues must be approved prior to the sale of the bonds.

Mr. Woodcock also testified about that the Authority elected not to propose a simple, across-the-board rate increase because such a proposal could result in the service charges and the fire protection charges paying for a portion of the IFR costs. This scenario would be contrary to prior Commission rulings that IFR costs are to be recovered only through metered rates.[29]

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[26] Ibid., p. 132. The reference was to CIP 14-19 and 28-30.

[27] See Authority Ex.2, pp. 3-4.

[28] Ibid., pp. 10-11. See also T. 4/27/99, p. 108.

[29] See Authority Ex.2, p. 16.

In prefiled testimony, Mr. Woodcock stated that the Authority proposed that the $10,000,000 bond issue would carry a 20-year term at an average annual rate of 6.5%. Under cross-examination, however, Mr. Woodcock conceded that the interest rate on the bonds would be closer to 5% rather than the 6.5 % projected by the Authority.[30] In addition to the Authority's concerns regarding the time lag, it was also seeking to lock in

spending per year, led Mr. Wunz to conclude that the additional bond issuance was unnecessary at this time.[35]

Mr. Wunz pointed out that delays in completion of CIP projects may result in ratepayers seeing no contemporaneous benefit from their funding of such projects through rate increases. He classified the Authority's CIP projects under two categories: line extension and storage, and well development and construction. While line extension and storage projects are low risk in terms of scheduling, well development and construction projects present scheduling risks due to the nature of well drilling and testing. The capacity of a well and the design for water treatment cannot be determined until the well is drilled and tested.[36]

Mr. Wunz concluded that a bond issue is not currently justified both due to scheduling risks and failure to establish meaningful schedules.[37] The scope and design of the CIP projects will evolve, so that proposed costs and schedules will be altered. Given the uncertain status of EPA radon regulation, Mr. Wunz testified it would be impossible for the Authority to design the construction and estimate the operating cost of a treatment facility.[38] Unlike Mr. Brown, Mr. Wunz recommended that the Authority incorporate Value Engineering in its CIP projects.[39] Mr. Wunz argued that the Authority's inability

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[35] Ibid., p. 5.

[36] Ibid., p. 7.

[37] Ibid., p. 10.

[38] Ibid., p. 12.

[39] Value Engineering is defined as "a professionally applied, function-oriented, systematic team approach used to analyze and improve value of a product, facility design, system or service- a powerful methodology for solving problems and/or reducing costs while improving performance/quality requirements." See Division Ex.1, p. 15.

to produce water consumption forecasts invalidated its proposed CIP project designs. He explained that forecasts of future water consumption are necessary in order to evaluate the suitability of existing facilities and the need for new future facilities. Such forecasts are the basis for planning capital improvements. However, in response to Division data requests, the Authority said that it had "no data" on which to project water usage in the year 2000, notwithstanding its projections made as part of the 1994 Water Supply Management Plan.[40] He recommended the Authority revise its designs to reflect water consumption forecasts and current costs.[41]

The Division called Andrea C. Crane, its utility regulation consultant, to testify. Based on her review and analysis of the Authority's proposal, Ms. Crane concluded that the authority required only $405,000 to finance its CIP projects rather than $10 million. Ms. Crane recommended the Commission grant the Authority permission to establish a short-term line of credit at a local bank for the rounded up figure of $450,000 in order to finance the remaining CIP projects.[42] Since the Authority could likely borrow its short-term funds at a rate lower than the 7.75% prime rate, Ms. Crane recommended the interest rate should be 6.5%.[43]

While the Authority claims a revenue requirement deficiency of $898,044, it presently has a revenue requirement surplus of $137,551 according to Ms. Crane's

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[40] Ibid.. p. 16.

[41] Ibid., p. 17.

[42] See Division Ex.2, Schedule 4 for Ms. Crane's revenue requirement recommendation.

[43] Ibid., pp. 12-13.

calculations.[44] This surplus led Ms. Crane to recommend that the Commission leave rates unchanged. While Ms. Crane recommended that there be no rate increase, she was not implying that rates should be reduced. She reasoned that a rate reduction followed by an increase within a few months would be inefficient.[45] She further advised that the Commission should not approve the $1 million IFR ramp-up unless the Authority adequately demonstrates progress on its previously funded projects.[46]

Ms. Crane testified that the Authority's abbreviated rate filing was appropriate and met the requirements of Rule 2.12.[47] However, she recommended adjustments totaling $1,035,592 to the Authority's claims for chemicals, wages and benefits, debt service and R&R reserve.[48]

The Division disagreed with the Authority's chemical cost methodology because it is inconsistent with other revenue requirement components. Ms. Crane testified that the Authority's chemical cost claim was based in part on post-test year pumpage levels.[49] Regarding the payroll, she recommended the elimination of the vacant position, unless the Authority demonstrated the position was necessary.

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[44] Ibid., p. 6; see also AJC Schedule 1.

[45] Ibid., p. 15. The Commission will have to raise rates if it eventually approves the additional IFR funding.

[46] Ibid., p. 6.

[47] Ibid., p. 7.

[48] Ibid., p. 8.

[49] Ibid., p. 10.

III. Debt Financing.

The Authority called John Ryan, Vice-President with Fleet Securities' Investment Banking and Financial Advisory Group, to testify on debt financing. Addressing Ms. Crane's suggestion that the Authority finance its CIP projects with a short-term line of credit, Mr. Ryan described the hidden costs associated with this type of financing. The "up front" costs associated with borrowing through a line of credit include: the borrower's responsibility for paying the bank's lawyers; a fee for entering into the loan agreement; and possibly a construction "consultant" to monitor the progress of capital projects. The magnitude of these costs depend upon the projects, but Mr. Ryan estimated the transaction cost for the Authority to finance $450,000 through a line of credit would be at least 10% of the borrowing itself.[50]

Mr. Ryan testified that the prime rate is irrelevant because any type of open line facility is based off the London Inter-Bank Offered Rate ("LIBOR") or the Federal funds rate.[51] He emphasized the importance of the Authority having revenues in place prior to borrowings, explaining that the market's acceptance of the bonds is based on the Authority's perceived ability to repay the debt.[52] Mr. Ryan testified that introducing a short-term financing mechanism, such as a line of credit, in anticipation of a long-term financing mechanism, such as a bond issuance, typically results in the duplication of

[50] See T. 4/27/99, pp. 103-104.

[51] Ibid., p. 107.

[52] Ibid., p. 108. A lower rate may be obtained through the procurement of bond insurance, but at the cost of paying the bond insurance premium. Mr. Ryan stated that the decision of whether to insure the bond is made just before the bond is sold. Ibid., pp. 113-114.

issuance costs.[53] Since issuance costs are static, issuing bonds early would not increase costs. Mr. Ryan indicated that he would normally advise that bonds be issued in advance of an actual need, if there was a reasonable expectation that there would be a draw in the future.[54] He conceded that this advice was based strictly on his expertise in financing and financing mechanisms, rather than in consideration of the ratepayers, and the Commission's obligation to approve only such rates as reflect "used and useful" capital improvements.[55]

IV. Settlement Agreement.

Just prior to the succeeding round of hearings, the Authority and the Division reached an agreement on the Authority's rate filing, and on June 16, 1999 they jointly requested the Commission's approval of a Settlement Agreement dated June 15, 1999 ("Settlement").[56]

Under the Settlement, the Authority is authorized to obtain the additional revenue it requested for the purpose of servicing $10 million of anticipated long-term debt. The Authority may adjust rates as of February 1, 2000, in an amount not to exceed $898,404, in order to finance the design and construction of CIP projects 14-19 and 28-30. However, this rate adjustment will become effective only if two conditions, as more fully set forth in the Settlement, are satisfied:

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[53] Ibid., p. 159.

[54] Ibid., p. 151.

[55] Ibid., p. 164.

[56] A copy of the Settlement is attached and incorporated by reference as Appendix A.

- by December 1, 1999, the Authority must file with the Commission and Division a Preliminary Design Report ("PDR"), including documentation for CIP Projects 14-19 and 28-30; and
- The Division's written confirmation to the Commission, within thirty days, of its satisfaction with the accuracy and completeness of the PDR and related documentation.

The Settlement postpones implementation of the Authority's final $1 million ramp-up in pay-as-you-go IFR funding from January 1, 2000 to February 1, 2000. Implementation of rates reflecting this final ramp-up is contingent upon the Authority's demonstration, in a filing with the Commission by October 31, 1999, of substantial progress toward IFR project completion. The Division will review the filing and make a recommendation to the Commission within forty-five (45) days. The Commission may, in its discretion, conduct a public hearing regarding the proposed rate increase.

The Settlement did not resolve the continuing disagreement between the parties concerning the Division's imposition of an annual regulatory assessment on the Authority, pursuant to R.I.G.L. § 39-1-23(a). The Settlement provides that the Division will bill the Authority for the regulatory assessment, and the Authority will recover these costs through its rates. However, the Authority reserves all of its rights to dispute the billing.[57]

Hearings on the proposed Settlement took place at the Commission's offices on June 15 and 16, 1999. The Authority presented a timeline indicating that the PDR for CIP

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[57] See *Kent County Water Authority v. State of Rhode Island (Department of Health)*, 723 A. 2d 1132 (RI 1999); R.I.G.L. §§ 39-16-13, 39-1-25.

projects would be completed and submitted to the Commission and Division not later than December 1, 1999.

The Authority is presently collecting $9,244,659 in revenues produced under currently authorized rates at the most recent sales figures.[58] Incorporating the terms of the Settlement, Mr. Woodcock testified that total revenue of $11,143,063 represented present revenues, augmented by the $898,404 settlement amount, and the $1,000,000 IFR ramp-up.[59]

The Commission objected to the wording of one section of the Settlement, "If the conditions are considered satisfied by the Division, the Authority is authorized to adjust rates."[60] This language could be construed to tie the Commission's hands and relinquish its jurisdiction regarding the IFR ramp-up.[61] Both the Authority and the Division assured the Commission that the ramp-up would proceed as it was originally approved, and confirmed that, under the Settlement, the Authority still had to demonstrate substantial progress before the ramp-up could be granted. They further acknowledged that nothing in the Settlement would preclude the Commission's ability to investigate, through a hearing or otherwise, the status of the Authority's infrastructure replacement program. After a brief recess, the parties proposed to add the following language to the end of

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[58] See T. 6/16/99, p. 45.

[59] Ibid., p. 44.

[60] Ibid., p. 75.

[61] Ibid., p. 58.

Section II.2 of the Settlement: "This paragraph is in no way intended to diminish the Commission's authority or statutory jurisdiction."[62]

At an open meeting conducted on June 25, 1999, the Commission considered the evidence which had been submitted in the case, and found that the proposed Settlement as just and reasonable, and in the best interests of ratepayers. Although the Settlement document did not address the issue of restricted accounts, the Commission agreed that the Authority should continue its current accounting for restricted accounts previously established by the Commission. The Settlement was unanimously approved.

Accordingly, it is

(15908) ORDERED:

1. The December 30, 1998 rate application filing by the Kent County Water Authority is hereby denied and dismissed.
2. The Settlement Agreement, as amended, is hereby approved. The Kent County Water Authority is authorized to adjust rates as of February 1, 2000, to obtain an amount not to exceed $898,404 of additional revenues in order to service $10,000,000 of long-term debt, expected to be issued by the Authority in order to finance the design and construction of Capital Improvement Projects ("CIP") 14-19 and 28-30.
3. This rate adjustment is subject to the Authority's filing, on or before December 1, 1999, a copy of the Preliminary Design Report ("PDR") for CIP projects 14-19 and 28-30, along with documentation supporting the Authority's proposed debt service expenses and the anticipated interest rate of

[62] See Joint Ex.1, see also T. 6/16/99, p. 79.

the long-term debt, and the Division's confirmation that the PDR and other documentation are complete, accurate, and reflect the representations made to the Commission and the Division in connection with this docket.

4. The Authority's $1,000,000 ramp-up in pay-as-you-go funding for Infrastructure Replacement ("IFR") Projects, originally scheduled to be implemented on January 1, 2000 pursuant to a Settlement Agreement dated August 18, 1997, is postponed until February 1, 2000, subject to the Commission's review and approval of a filing to be made not later than October 31, 1999, demonstrating the Authority's substantial progress towards completion of the scheduled IFR projects.
5. The Authority shall abide by all other terms and conditions imposed by the Settlement Agreement and by this Report and Order.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND ON JUNE 25, 1999, PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED OCTOBER 4, 1999.

PUBLIC UTILITIES COMMISSION

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James J. Malachowski, Chairman

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Kate F. Racine, Commissioner

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Brenda K. Gaynor, Commissioner

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE:	**KENT COUNTY WATER AUTHORITY**	**)**	
	APPLICATION TO CHANGE RATE	**)**	**DOCKET NO. 2860**
	SCHEDULES	**)**	

SETTLEMENT AGREEMENT

The Kent County Water Authority (the "Authority") and the Division of Public Utilities and Carriers (the "Division" and referred to collectively with the Authority as the "Parties") have reached an agreement on the Authority's rate filing and jointly request the approval of this Settlement Agreement by the Public Utilities Commission (the "Commission").

I. RECITALS

On December 30, 1998, the Authority filed an abbreviated rate application pursuant to Rule 2.10 of the Commission's Rules of Practice and Procedure. The application sought to increase rates 9.71% for the rate year commencing July 1, 1999 and ending June 30, 2000 in the categories enumerated by Rule 2.10 and related reserve accounts. A Revenue Requirement Summary containing the Authority's requests, the Division's recommended adjustments and an agreed to position of the parties is attached hereto and marked "Schedule 1". Schedule 1 is restated and incorporated in this Settlement Agreement by reference.

In response to the Authority's filing, the Division conducted an investigation of the Authority's proposed rate requests through two sets of data requests and by the aid of its staff and two outside, expert consultants, E. Charles Wunz, P.E., DEE and Andrea C. Crane.

After due consideration of the testimony, exhibits and other documentation included in the filings of both the Authority and the Division, the Parties have now agreed to a comprehensive settlement which resolves all issues relating to the Authority's application. The Parties 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 February 1, 2000 to obtain an amount not to exceed an additional $898,404 of revenues in order to service $10,000,000 of anticipated debt (the"Bonds") to be issued in order to finance the design and construction of capital improvement projects ("CIP") 14-19 and 28-30, subject to and conditioned upon the following:

a. The Authority's filing with the Commission (with a copy to the Division) on or before December 1, 1999, a copy of the completed Preliminary Design Report for CIP 14-19 and 28-30 (the "Report"), along with documentation supporting the Authority's debt service expenses and the anticipated interest rate of the Bonds; and

b. Confirmation by the Division that the Report, estimated debt service expense, and interest rate data are complete, accurate and reflect the representations that the Authority has made to the Division and Commission in connection with this docket, and that all remaining conditions for the CIPs have been satisfied.

2. Within thirty (30) days of the Division's receipt of the Report, the Division shall report to the Commission by writing (with a copy to the Authority) that, in the Division's opinion, the conditions reflected in Paragraph Nos. 1(a) and (b) either

have been satisfied or have not been satisfied. If the conditions are considered satisfied by the Division, the Authority is authorized as of February 1, 2000 to adjust rates to recover its debt service expense in connection with the Bonds unless the Commission otherwise directs. In the event that the conditions are not considered satisfied by the Division, the Authority is not authorized to so adjust rates until receiving approval from the Commission. This paragraph is in no way intended to diminish the Commission's authority or statutory jurisdiction.

3. The Authority's $1,000,000 IFR ramp-up currently scheduled to be implemented on January 1, 2000 pursuant to the Settlement Agreement dated August 18, 1997 is post-poned until February 1, 2000. As a prerequisite to the above increase going into effect, the Authority shall be required to demonstrate that it has made substantial progress towards completion of the scheduled IFR projects. The Authority shall make a filing with the Commission no later than October 31, 1999. Such filing shall, at a minimum, specify the total length of main installed, the size of the installed main, the dollars expended/committed, and such other information as the Commission or Division may require. The Division shall review the filing and make any comments or recommendations to the Commission (with a copy provided to the Authority) within forty-five (45) days of the filing date in order to allow the Commission sufficient opportunity to conduct a hearing if deemed necessary in the discretion of the Commission. Upon receipt of the Division's review comments, the Commission may decide to conduct a public hearing on the proposed tariff. If the Commission elects not to conduct a public hearing, the proposed rates shall go into effect on February 1, 2000, unless the Commission otherwise directs.

4. The Authority's revenue requirements for all items other than debt service are set forth in Schedule 1. See Agreed to Position contained in Schedule 1. No rate increase other than what is outlined above in Paragraph Nos. 1 and 3 is required.

5. The Parties disagree as to whether *Kent County Water Authority v. State of Rhode Island (Department of Health)*, 723 A.2d 1132 (R.I. 1999) or R.I.G.L. Section 39-16-13, permits the imposition of the regulatory assessment (Item 45-$23,000) upon the Authority by the Division. The regulatory assessment shall be recovered by the Authority in rates, and be billed by the Division during its next annual assessment period. The Authority reserves all of its rights with respect to Item 45 to dispute the billing under R.I.G.L. Section 39-1-25.

III. EFFECT OF SETTLEMENT

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.

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.

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 fair, reasonable and in the public interest and have caused this agreement to be executed by their respective representatives, each being authorized to do so.

Dated at Providence this 15th day of June, 1999.

KENT COUNTY WATER AUTHORITY
By its attorney,

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