

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
**PUBLIC UTILITIES COMMISSION**

IN RE: WOONSOCKET WATER DIVISON :  
REQUEST TO DE-TARIFF WATER : DOCKET NO. 3121  
TRUCK SALES :  
REPORT AND ORDER

I. WWD's PETITION AND PRELIMINARY ACTION

On May 2, 2000, the city of Woonsocket Water Division ("WWD") filed with the Public Utilities Commission ("Commission") a petition pursuant to R.I.G.L. § 39-3-11 to remove water truck sales from its tariff. In its filing, WWD stated that the de-tariffing of water truck sales would promote public health and safety due to traffic congestion caused by water trucks filling up at its Manville Road treatment facility, and would protect WWD's water supply.<sup>1</sup> Furthermore, WWD stated it had no duty to provide water to water truck companies that will serve customers located outside of WWD's service territory, which consists of Woonsocket and 600 customers in North Smithfield.<sup>2</sup>

On May 19, 2000, the Division of Public Utilities and Carriers ("Division") filed a memorandum with the Commission recommending WWD's de-tariffing filing be suspended.<sup>3</sup> The Division noted that WWD's filing was "devoid of any facts" to determine if WWD's concerns are "bona fide," and that the filing did not "show that customers can obtain the service by alternative means" because "competitive services already exist

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<sup>1</sup> WWD's filing of 5/2/00, pp. 1-2.

<sup>2</sup> Id., pp. 2-3.

that will enable customers to obtain the deregulated service at a reasonable price.”<sup>4</sup> Lastly, the Division noted that Providence Water Supply Board (“Providence Water”), Pawtucket Water Supply Board (“Pawtucket Water”), and Kent County Water Authority (“KCWA”) “currently permit Water Truck Sales without restricting” them to end-users in their service territories.<sup>5</sup> The Commission suspended WWD’s de-tariffing filing at an open meeting held on May 25, 2000.

On November 17, 2000, the Division filed an offer of settlement to WWD with the Commission. WWD did not accept the Division’s settlement proposal. Following public notice, a hearing was conducted at the offices of the Commission, 100 Orange Street, Providence, Rhode Island, on November 20, 2000. The following appearances were entered:

FOR WWD:	Craig Eaton, Esq.
FOR DIVISION:	Leo Wold, Esq. Special Assistant Attorney General
FOR COMMISSION:	Steven Frias, Esq. Senior Legal Counsel

At the hearing, Ronald B. Martineau, who is employed by Aqua Fil, a water truck sales company that purchases water from WWD, gave public comment regarding the Division’s offer of settlement. Mr. Martineau stated he wanted to purchase water from WWD on Saturdays

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<sup>3</sup> Div. Memorandum of 5/19/00, p. 1.

<sup>4</sup> Id.

<sup>5</sup> Id., p. 2.

and that a water truck may wait inside the yard of WWD's Manville Road treatment facility while another water truck is being serviced.<sup>6</sup>

Also, Mr. Martineau objected to a requirement that water truck operators purchase a reduced pressure zone ("RPZ") back-flow preventer, which would be difficult for one man to carry and could cost approximately \$1,500.<sup>7</sup>

After a recess, the Division informed the Commission that WWD and Division had not reached agreement and that the Division was withdrawing its offer of settlement because of differences on such issues as the appropriate back-flow preventer.<sup>8</sup> Mr. Martineau also stated that he has been denied access to WWD's facilities to purchase water since June 1999.<sup>9</sup>

On November 21, 2000, WWD filed a letter with the Commission waiving any statutory rights to have the Commission render a final decision in this docket within the statutory period required by R.I.G.L. § 39-3-11. At an open meeting held on November 21, 2000, the Commission ordered that pending a final determination by the Commission in this docket, WWD cease and desist from conditioning the terms of its water truck sales tariff in any manner without Commission authorization, and that WWD provide water to any and all water truck

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<sup>6</sup> Tr. 11/20/00, pp. 6, 12.

<sup>7</sup> *Id.*, pp. 15-16.

<sup>8</sup> *Id.*, pp. 27-29.

<sup>9</sup> *Id.*, pp. 38, 40.

sale companies pursuant to the terms and conditions of its water truck sales tariff. The parties were directed to file testimony in this matter.

## II. DIVISION

In response to WWD's de-tariffing filing, the Division submitted the pre-filed testimony of Alberico Mancini, an engineering specialist for the Division. In his pre-filed testimony, Mr. Mancini discussed WWD's proposal to place certain terms and conditions upon sales to water trucks.<sup>10</sup>

Regarding the requirement of a back-flow prevention device, Mr. Mancini explained that the purpose of such a device is to prevent cross-contamination between a potable water system such as WWD's and another source such as a water truck.<sup>11</sup> A back-flow prevention device was not previously required or utilized by water truck companies obtaining water from WWD.<sup>12</sup> Mr. Mancini explained that there are three main types of back-flow preventers: a single check valve, a double check valve, and an RPZ device.<sup>13</sup> A single check valve or double check valve is used for a low to medium hazard connection, while an RPZ unit is used for a high hazard connection.<sup>14</sup>

Mr. Mancini recommended that a single check valve back-flow prevention device be installed at the hydrant used by water trucks at

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<sup>10</sup> Div. Ex. 1 (Mancini's pre-filed testimony), p. 2.

<sup>11</sup> Id., p. 3.

<sup>12</sup> Id.

<sup>13</sup> Id., p. 4.

<sup>14</sup> Id.

WWD's Manville Road treatment facility because it constitutes a very low hazard connection, and because Pawtucket Water only requires the use of a single check valve in similar circumstances.<sup>15</sup> Furthermore, Mr. Mancini noted that a single check valve is affordable and light, while an RPZ unit weighs approximately 200 pounds, costs approximately \$1,500, and would prolong the time required for a water truck to fill its tank from approximately 15 minutes to one hour.<sup>16</sup> If an RPZ unit is to be used, Mr. Mancini recommended that WWD purchase the device and either attach it to the fire hydrant or devise a system in which the RPZ unit could be easily attached or detached from the hydrant.<sup>17</sup>

On other issues, Mr. Mancini noted that historically WWD allowed water truck companies access to its Manville Road treatment plant from 8:00 a.m. to 4:00 p.m. from Monday through Saturday.<sup>18</sup> He believed it was reasonable for WWD to require one water truck to wait outside of the plant until the water truck inside the yard had completed its filling operation and exited the facility.<sup>19</sup> After a review of WWD's records, Mr. Mancini also believed it was reasonable for WWD to impose an aggregate daily limit on all water truck fill-ups of not more than 12 truckloads or 120,000 gallons per day, whichever is less.<sup>20</sup> Furthermore, Mr. Mancini concurred that it was appropriate for WWD to restrict or curtail water

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<sup>15</sup> Id., pp. 4-5.

<sup>16</sup> Id., pp. 5-6.

<sup>17</sup> Id., p. 7.

<sup>18</sup> Id.

<sup>19</sup> Id., p. 8.

<sup>20</sup> Id.

truck sales under the scenarios outlined in WWD's Water Supply Management Plan, Section 5, entitled Emergency Demand Management, specifically when Tier 4, Tier 5 and Tier D, Stages 4 and 5 are triggered.<sup>21</sup> Lastly, the Division contended that WWD is obligated to provide water to tank truck operators, and that, as a practical matter, water truck companies that deliver to northern Rhode Island do not have an alternative source of supply to purchase water other than WWD.<sup>22</sup> Mr. Mancini noted that the closest facility, other than WWD, for these water truck companies is Pawtucket Water, which is another regulated entity, and that Pawtucket's water is poor in coloration.<sup>23</sup>

### III. WWD's REBUTTAL

In rebuttal to the Division, WWD submitted the pre-filed testimony of Emerson Marvel, the Superintendent of WWD. In his pre-filed testimony, Mr. Marvel discussed the appropriateness of de-tariffing WWD's water truck sales and argued that some of Mr. Mancini's recommendations will cause a serious threat to the health, safety and welfare of WWD's customers.<sup>24</sup> Mr. Marvel argued that de-tariffing of water truck sales would give WWD discretion in serving water tank trucks in order to avoid safety problems stemming from traffic congestion at the Manville Road treatment plant.<sup>25</sup> Also, Mr. Marvel noted that de-

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<sup>21</sup> Id., pp. 8-9.

<sup>22</sup> Id., p. 9.

<sup>23</sup> Id.

<sup>24</sup> WWD Ex. 3 (Marvel's pre-filed testimony), p. 4.

<sup>25</sup> Id., pp. 4-5.

tariffing would give WWD needed flexibility with respect to serving water trucks in the event WWD determines that the number of water trucks seeking to purchase water from WWD on any given day for resale to entities outside WWD's jurisdiction will place WWD's water supply at risk.<sup>26</sup> Furthermore, Mr. Marvel argued that water trucks have alternative sources of supply such as Pawtucket Water and Providence Water.<sup>27</sup>

Regarding the appropriate back-flow preventer, Mr. Marvel emphasized the need for an RPZ back-flow preventer because WWD has an obligation to provide safe drinking water and therefore, any connection to WWD's system should be considered a high hazard connection.<sup>28</sup> Furthermore, Mr. Marvel argued that the use of a single check valve or double check valve back-flow preventer would not be consistent with the Rates, Rules and Regulations of the Water Works Division of the Public Works Department for the City of Woonsocket dated January 29, 1960 ("Rates, Rules and Regulations").<sup>29</sup> Mr. Marvel contended that WWD has no knowledge of what types of material have been hauled previously within a given water truck; therefore, this connection to the WWD system should be considered a high hazard and an RPZ back-flow preventer is appropriate.<sup>30</sup> Also, Mr. Marvel noted that

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<sup>26</sup> Id., p. 5.

<sup>27</sup> Id., p. 7.

<sup>28</sup> Id., p. 9.

<sup>29</sup> Id., pp. 9-10.

<sup>30</sup> Id.

KCWA requires an RPZ back-flow preventer for all its cross-connections, including those to water trucks.<sup>31</sup> Although Mr. Marvel concurred with Mr. Mancini that a single check valve would be more affordable and easier to handle for water truck operators, Mr. Marvel emphasized that the focus should be on protecting WWD's water quality.<sup>32</sup> Furthermore, Mr. Marvel argued that if the operators of water trucks are concerned that an RPZ back-flow preventer will prolong the time it takes to fill their trucks, the operators could purchase either two 2-inch RPZ units or one 3-inch RPZ unit.<sup>33</sup> Mr. Marvel objected to the Division's suggestion that WWD purchase and permanently attach an RPZ unit to its hydrant because the Woonsocket Fire Department might need unencumbered access to the hydrant in an emergency situation.<sup>34</sup>

Addressing service hours for water tank trucks, Mr. Marvel stated that a time period of Monday through Friday from 8:45a.m. to 3:45p.m. is fair because WWD's workers begin their day at 8:30a.m. and leave by 4:00p.m., and there is only one worker at the facility on Saturday.<sup>35</sup> Mr. Marvel concurred with Mr. Mancini's suggestion that WWD impose an aggregate daily limit on water truck fill-ups of 12 truckloads 120,000 gallons per day whichever is less, and with Mr. Mancini's suggestion regarding the restriction of water truck operators when certain

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<sup>31</sup> Id., p. 11.

<sup>32</sup> Id., p. 12.

<sup>33</sup> Id., pp. 12-13.

<sup>34</sup> Id., p. 13.

<sup>35</sup> Id., p. 14.

conditions are met under WWD's Water Supply Management Plan, Section 5, entitled Emergency Demand Management regulations.<sup>36</sup>

#### IV. JANUARY 16, 2001 HEARING

On January 16, 2001, the Commission reconvened its public hearing on this docket. Michael D'Andrea, an employee of Lakeside Swimming Pool and Supply Company ("Lakeside") gave public comment, stating that since July 1999, Lakeside's water trucks had been unable to purchase water from WWD.<sup>37</sup> As a result, Lakeside has had to purchase water from Providence Water and at locations in North Providence and Millbury, Massachusetts at the additional cost of approximately \$20 per truckload.<sup>38</sup> Mr. D'Andrea testified that in 2000, WWD's denial of water truck service caused Lakeside to incur an additional \$10,000 in purchased water costs and resulted in a lost revenues to WWD of approximately \$15,000.<sup>39</sup>

WWD presented Mr. Marvel as its witness at the hearing. Mr. Marvel testified that WWD requires an RPZ device for any connection to its system that is two inches or greater in size.<sup>40</sup> He also stated that, according to Woonsocket's Fire Chief, a permanent RPZ unit affixed to a hydrant at the Manville Road treatment facility would interfere with fire protection and, therefore be prohibited.<sup>41</sup> Under cross-examination,

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<sup>36</sup> Id., pp. 14-15.

<sup>37</sup> T. 1/16/01, p. 8.

<sup>38</sup> Id., pp. 8-9.

<sup>39</sup> Id., p. 9.

<sup>40</sup> Id., p. 33.

<sup>41</sup> Id., pp. 34-35.

however, Mr. Marvel admitted that WWD has only recently begun to require the use of an RPZ unit, although RPZ devices have been available for “many years,” and that WWD had never experienced contamination problems.<sup>42</sup> Mr. Marvel acknowledged that Pawtucket Water requires only a single check valve back flow preventer for water truck connections.<sup>43</sup> Furthermore, Mr. Marvel acknowledged that Section 8 of WWD’s Rates, Rules and Regulations allows WWD to permit water truck companies to have attachments to a hydrant.<sup>44</sup> Mr. Marvel admitted that if other regulated water utilities such as Providence Water and Pawtucket Water sought to de-tariff their water truck sales as WWD is requesting, water truck companies would be placed in difficulty.<sup>45</sup>

The Division presented Mr. Mancini as its witness at the hearing. Mr. Mancini reiterated the Division’s position that a single check valve would be adequate because water tank trucks are a low hazard to WWD’s water supply.<sup>46</sup> If WWD continues to insist on the use of an RPZ unit, however, Mr. Mancini recommended that the RPZ unit be supplied by WWD and be placed directly on the hydrant for use by all water trucks. Furthermore, Mr. Mancini noted that an RPZ unit could be quickly removed from the hydrant in the case of an emergency.<sup>47</sup> Under cross-examination, Mr. Mancini explained that KCWA requires an RPZ unit for

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<sup>42</sup> Id., pp. 68, 95.

<sup>43</sup> Id., pp. 75-76.

<sup>44</sup> Id., p. 77.

<sup>45</sup> Id., p. 88.

<sup>46</sup> Id., pp. 148-149.

<sup>47</sup> Id., pp. 150-151.

water trucks connecting to its system because KCWA's system does not have a treatment plant.<sup>48</sup> He reiterated that Pawtucket Water only requires a single check valve. Finally, he pointed out that Providence Water, which provides an RPZ unit to water trucks at the service site, does so because, unlike WWD, Providence Water does not serve water trucks at its treatment facility.<sup>49</sup>

## V. POST-HEARING MEMORANDA

At the conclusion of the hearing, the parties filed memoranda with the Commission on issues regarding the Commission's legal authority to require WWD to service water trucks that do not utilize an RPZ device, and the feasibility of WWD supplying an RPZ unit to be located at the hydrant used by water trucks at WWD's Manville Road treatment plant.

### A. WWD

In its post-hearing memorandum, WWD interpreted the Woonsocket City Ordinance Chapter 1431, adopted May 3, 1989, which mandates "*the installation of back-flow prevention devices on all new water service*" lines, as requiring all water trucks served by WWD to use an RPZ device.<sup>50</sup> WWD cited R.I.G.L. § 46-15.3-14, which states that suppliers of drinking water "*may require that as a condition to being provided water service that customers provide cross-connection control in a manner approved by*" the supplier, as statutory authority for the

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<sup>48</sup> Id., p. 158.

<sup>49</sup> Id., pp. 160, 170.

<sup>50</sup> WWD's Post-Hearing Memorandum, p., 1.

Woonsocket City Council to issue the ordinance requiring the use of an RPZ unit and for WWD to issue regulations requiring the use of an RPZ unit as well.<sup>51</sup> Furthermore, WWD argued that the Commission could not prohibit WWD from requiring the use of an RPZ unit because that would constitute Commission interference in the management prerogatives of WWD.<sup>52</sup> Specifically, WWD argued that the Commission would be exceeding its authority by interfering with WWD's management policy on the use of RPZ units, "absent evidence of unjust and unreasonable burden on the ratepayers."<sup>53</sup>

Regarding the feasibility of WWD providing an RPZ unit located at the hydrant for use by water tank trucks, WWD argued that this RPZ device would obstruct or interfere with the use of the hydrant in a fire emergency, in contravention of R.I.G.L. §23-37-4, and could create liability issues for WWD.<sup>54</sup>

#### B. DIVISION

In its post-hearing memorandum, the Division as an initial matter noted that WWD had only requested de-tariffing of water truck sales and, to date, had not sought to amend its tariff to require the use of an RPZ unit.<sup>55</sup> Moreover, the Division pointed out that Woonsocket City Ordinance, Chapter 1431 only refers to a "*back-flow prevention device*

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<sup>51</sup> Id., pp. 2, 6.

<sup>52</sup> Id., pp. 3-4.

<sup>53</sup> Id., p. 4, citing Providence Water Board v. PUC, 708 A.2d 537, 544 (R.I. 1998).

<sup>54</sup> Id., p.6.

<sup>55</sup> Division's Post-Hearing Memorandum, pp. 2-3.

...installed on all new water service lines 2" in size and over" and does not use the term "RPZ".<sup>56</sup> In fact, the ordinance only mandates a back-flow prevention device and, the Division contended, a single check valve would satisfy this requirement.<sup>57</sup> Furthermore, the Division noted that this requirement only applies to *new* water service lines, and therefore should be inapplicable to water trucks because this ordinance was approved May 3, 1989 but water trucks have been taking water from WWD's hydrant since the 1970s.<sup>58</sup> Also, the Division emphasized that a "service line" is a line that serves residential and commercial buildings and, therefore, the hydrant used by water tank trucks should not be considered a "water service line".<sup>59</sup>

Regarding the Commission's legal authority to require WWD to serve water trucks without an RPZ device, the Division argued that if water truck operators are required to purchase their own RPZ units, they will likely cease purchasing water from WWD because an RPZ unit is expensive and too heavy for a driver to set up appropriately.<sup>60</sup> The Division calculated that, without these water truck sales, WWD's annual revenues would decrease by approximately \$26,075 and WWD could require a compensatory rate increase.<sup>61</sup> Accordingly, the Division argued that the Commission has authority to prohibit WWD from requiring

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<sup>56</sup> Id., p. 3.

<sup>57</sup> Id.

<sup>58</sup> Id., pp. 3-4.

<sup>59</sup> Id., p.4.

<sup>60</sup> Id., p.5.

<sup>61</sup> Id.

water truck operators to purchase and use an RPZ unit because the resulting lost truck sales revenues would be detrimental to WWD's ratepayers.<sup>62</sup>

Lastly, the Division argued that WWD has not provided a reasonable explanation why water trucks could use an RPZ unit that was supplied by WWD and stored near the hydrant, suggesting that the real reason WWD sought to impose the RPZ requirement was because WWD no longer wanted to be in the business of serving water trucks.<sup>63</sup>

## COMMISSION FINDINGS

### A. JURISDICTION

At the outset the Commission must determine if WWD's sales to water truck companies are subject to Commission jurisdiction. WWD maintains that these sales are not within the Commission's jurisdiction because WWD sells water to water truck companies who may then resell the water to customers located outside of WWD's service territory. Essentially, WWD claims it only has a duty to serve customers within its service territory, which encompasses Woonsocket and 600 customers located in North Smithfield. Therefore, WWD argues, the Commission cannot require WWD to sell water to entities that will resell water to customers located outside of WWD's service territory. We disagree.

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<sup>62</sup> Id., pp. 5-6

<sup>63</sup> Id., pp. 6-7.

It is undisputed that WWD is a regulated public utility that presently services water trucks under a tariff approved by this Commission. Even assuming, arguendo, that WWD is correct, as a regulated public utility pursuant to R.I.G.L. § 39-1-2(20), WWD is still obligated to service water trucks that resell water to customers within WWD's service territory. It would be administratively burdensome (if not impossible) for WWD or the Commission to enforce a requirement that these water trucks not resell their water to customers located outside of WWD's service territory. Furthermore, the record indicates that if WWD were to discontinue water truck service, or were to impose such burdensome restrictions on water truck companies that would de facto end this service, the resulting loss of water truck sales revenues could require a WWD to seek compensatory rate increase from WWD's ratepayers.

Accordingly, we find that WWD's water truck sales are subject to the Commission's jurisdiction. WWD is a regulated public utility that is obligated under a Commission-approved tariff to provide water to customers, including water truck companies, within its service territory. Although some water truck companies served by WWD may also resell water to customers located outside of WWD's service territory, the Commission finds that it would be administratively difficult to enforce a restriction against the resale of water outside of WWD's service territory. Moreover, the Commission agrees with the Division that such a

restriction would likely result in a loss of water truck sales revenues to the detriment of WWD's other ratepayers.

B. IS DE-TARIFFING WATER TRUCK SALES IN THE BEST INTEREST OF WWD'S RATEPAYERS?

The next issue presented is whether the de-tariffing of WWD's water truck sales service is in the best interest of WWD's ratepayers. The Commission has previously stated that it "*will allow a utility to de-tariff a service if there is a competitive market for the service, and the quality of service for ratepayers will not be undermined.*"<sup>64</sup> WWD claims that if its request for de-tariffing is granted, it does not intend to discontinue servicing water trucks, but only to impose additional requirements on water truck companies desiring service from WWD.

However, the testimony in this docket indicates that the additional costs and burdens associated with WWD's requirement that water trucks purchase, transport and use an RPZ unit in order to obtain service would cause many water truck companies to cease purchasing water from WWD and seek service from alternate suppliers. We find that requiring water trucks to purchase a \$1,500 RPZ device, and requiring water truck operators to transport, unload, set up and then remove these 200-pound units each time they fill-up at WWD's hydrant, is an onerous and unnecessary burden. Although WWD claims that its RPZ requirement is

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<sup>64</sup> In Re: Providence Gas Company De-Tariffing Comfort Plans, Docket No. 3100, Order No. 16634 (issued June 13, 2001).

neutral on its face, the record indicates that the RPZ requirement will, in effect, constitute a de facto prohibition on water truck sales because water truck operators will not be able to comply with the RPZ requirement in an economical, safe or efficient manner. We also note that the cost of service to WWD's ratepayers who purchase water from these water truck companies is likely be increased by the pass-through of additional transportation costs they expect to incur to obtain water from other suppliers.

Furthermore, the evidence presented in this docket indicates that a competitive supply market does not exist for servicing water trucks. Only a limited number of suppliers sell water to tank trucks in the northern half of Rhode Island. These suppliers primarily consist regulated municipal water departments, such as Providence Water and Pawtucket Water, or regulated public utilities such as Kent County Water Authority. The Commission is concerned that if WWD is allowed to de facto discontinue servicing water trucks, these other water utilities may also seek to discontinue servicing water trucks, thereby decreasing the number of suppliers servicing water trucks in northern Rhode Island.

Since it has not been demonstrated that a competitive market exists for water truck service in northern Rhode Island, nor has WWD demonstrated that the quality of service to its ratepayers, including water truck companies, would not be undermined by the detariffing of its water

truck sales service, the Commission concludes that de-tariffing WWD's water truck sales service is not in the best interest of its ratepayers.

C. REASONABLE TERMS AND CONDITIONS FOR WATER TRUCK SALES

In the alternative, there are a certain restrictions WWD has sought to impose on water trucks with which the Division has concurred in order to provide flexibility to WWD in times when WWD's water supply is limited. The Division and WWD concur that WWD should be permitted to curtail sales to water trucks under the circumstances outlined in the WWD's Water Supply Management Plan, Section 5, entitled "Emergency Demand Management." They also agree that WWD should be permitted to impose an aggregate daily limit on water truck sales of not more than 12 truck loads, or 120,000 gallons, per day, whichever is less. The intent of these restrictions is to ensure that an adequate drinking water supply is maintained. The Commission finds these restrictions are reasonable for the protection of WWD's water supply.

Additionally, the Division and WWD agree that only one water truck at a time should be parked for servicing inside the yard at WWD's Manville Road treatment facility. The intent of this restriction is to avoid traffic congestion at the treatment facility and promote safety. The Commission finds this restriction to be a reasonable and appropriate measure for WWD to alleviate its safety concerns and avoid congestion.

D. A SINGLE CHECK VALVE BACK-FLOW PREVENTION DEVICE IS SUFFICIENT

The primary area of disagreement between the parties is over WWD's proposed requirement that water trucks purchase, transport and utilize an RPZ unit in order to acquire water from WWD's hydrant. WWD argues that water trucks pose a high hazard connection to WWD's water supply and therefore an RPZ unit is necessary. In contrast, the Division maintains that the use of a single check valve back-flow prevention device for water truck connections is sufficient to protect WWD's water supply or, in the alternative, suggests that WWD purchase and store its own RPZ unit on site for use by all water trucks.

Evidence was presented which indicated that other public water utilities, such as Pawtucket Water, require only a single check valve back-flow prevention device for water truck connections at their facilities. Furthermore, WWD did not present any evidence indicating that any of the three water truck companies serviced by WWD have otherwise been engaged in the transport of hazardous materials. It is also undisputed that, notwithstanding the fact that RPZ units have not previously been required or used for water truck connections at its facilities, WWD's water supply has never been contaminated by water trucks. Lastly, the Division submitted uncontested testimony that a single check valve back-flow prevention device is affordable and light enough for a water truck operator to purchase, transport and use to connect to WWD's

facilities. Therefore, the Commission finds that it is reasonable for WWD to require water truck operators to purchase, transport and utilize a single check valve back-flow prevention device in order to receive service from WWD.<sup>65</sup>

E. WWD'S LEGAL ARGUMENTS FOR AN RPZ REQUIREMENT LACK MERIT

WWD interprets R.I.G.L. §46-15.3-14 and Woonsocket City Ordinance, Chapter 1431 as requiring, or at minimum granting, WWD the discretion to require the use of an RPZ unit by water trucks connecting to its facilities. Also, WWD suggests that it is being treated differently than other public utilities because both KCWA and Providence Water are allowed to require water trucks to use RPZ unit. The Commission finds that WWD's arguments lack merit.

1. WOONSOCKET CITY ORDINANCE

WWD argues that Woonsocket City Ordinance, Chapter 1431, requires an RPZ unit to be used by water trucks. The Commission disagrees. The ordinance does not include any specific reference to RPZ devices. The ordinance only requires a "*back-flow prevention device.*" The Commission is persuaded by the Division's testimony that a single check valve back-flow prevention device will adequately satisfy the requirements of the ordinance. Furthermore, we agree with Division counsel that the ordinance only applies to new water service lines. It is

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<sup>65</sup> We also agree with the Division that nothing precludes WWD from purchasing and storing its own RPZ unit on site for use by all water trucks.

not disputed that water trucks have been serviced by WWD for decades prior to the enactment of this ordinance. Also, the term “service lines” can be reasonably construed to mean water lines that service residential and commercial buildings. The WWD hydrant used to service water trucks does not service buildings of any type. Lastly, the Commission finds it odd that although this ordinance has been in effect for over a decade; WWD has only recently interpreted this ordinance to require the use of an RPZ unit by water trucks serviced by WWD. Therefore, the Commission finds that the Woonsocket City Ordinance, Chapter 1431, does not require the use of an RPZ unit by water trucks, and that, based upon the evidence presented, a single check valve back-flow prevention device will reasonably satisfy the requirements of the ordinance.

2. RHODE ISLAND’S PUBLIC DRINKING WATER PROTECTION ACT

WWD also argues that R.I.G.L. § 46-15.3-14, a provision of Rhode Island’s Public Drinking Water Protection Act of 1987, grants discretion to WWD to impose a cross-connection control requirement, such as an RPZ device, upon its customers. Once again, the Commission finds it odd that although this statute has been in effect for over a decade, WWD has only recently interpreted this statute to grant WWD the authority to require the use of an RPZ unit by water trucks serviced by WWD. The Commission notes that, like the Woonsocket City Ordinance, this statute makes no specific reference to either RPZ units, nor does it reference water trucks in particular. Furthermore, the Commission will construe

this statute so as not to be in conflict with the Commission's powers under Title 39.<sup>66</sup> In as much as the Commission has concluded, supra, that WWD's imposition of an RPZ requirement on water trucks will negatively impact WWD's ratepayers, R.I.G.L. § 46-15.3-14 should not be construed to grant WWD the authority to impose restrictions on tariffed services which will negatively impact WWD's ratepayers. Under our ruling, WWD retains the option of requiring water trucks to purchase and use a single check valve, or adopting the Division's suggestion that WWD purchase and store its own RPZ unit on site for use by water trucks. Either approach will enable WWD to satisfy its statutory obligations to protect its water supply as well as fulfill its statutory obligations to serve its customers.<sup>67</sup>

### 3. WATER TRUCK SALES BY OTHER PUBLIC UTILITIES

WWD argues that both KCWA and Providence Water require the use of an RPZ unit by water trucks, and therefore, so should WWD. The flaw in this argument is that the circumstances of WWD's water truck sales service are not comparable to those of KCWA or Providence Water. At WWD, water trucks obtain service at a hydrant located on site at WWD's treatment facility. Therefore, even if contamination from a water truck were to occur the problem could be dealt with immediately before

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<sup>66</sup> Statutes should be construed such that they will harmonize with each other. Blanchette v. Stone 591 A.2d 785, 786-787 (R.I. 1991).

<sup>67</sup> The Commission also notes that any regulation adopted by WWD that requires water trucks to purchase, carry and use of an RPZ device is void because WWD does not have the authority to impose additional terms and conditions on a tariffed service without Commission approval.

involving the rest of WWD's water system. Unlike WWD, KCWA does not have any water treatment facility to remedy contamination of its water system from a water truck; hence, KCWA requires the use of an RPZ device. Also, unlike WWD, Providence Water does not service water trucks at its treatment facility site. Therefore, if a water truck were to contaminate Providence Water's water system, the contamination could spread through the system before reaching the treatment facility. Indeed, Providence Water supplies and stores its *own* RPZ unit for use by water trucks. In conclusion, the Commission finds that the circumstances of WWD's water truck sales are not comparable to those of KCWA or Providence Water, which reasonably require the use of an RPZ device.

F. WWD MAY EXERCISE ITS MANAGERIAL PEROGATIVE BY PURCHASING AN RPZ UNIT FOR USE BY WATER TRUCKS

As an alternative to requiring a single check valve back-flow prevention device, the Division notes that WWD may opt to purchase and store its own RPZ unit on site for use by all water trucks obtaining service from WWD. Either approach ensures that the choice of which type of back-flow prevention device to be used -- an RPZ unit or a single check valve device -- remains within the managerial discretion of WWD. The Commission adopts the Division's recommendation and accordingly, finds that nothing precludes WWD from purchasing and storing its own RPZ unit on site for use by all water trucks serviced by WWD.

The Commission also points out that even if WWD is correct that the imposition of an RPZ unit requirement upon water trucks is within WWD's managerial discretion, the Commission can still intervene in this area if WWD's policy would unjustly impact ratepayers.<sup>68</sup> As noted above, if WWD were allowed to require that water trucks purchase, transport and set up RPZ units, water truck companies would likely discontinue purchasing water from WWD. This would result in a loss of water truck sales revenues, potentially requiring WWD to seek a compensatory rate increase from WWD's ratepayers. Also, to the extent these water truck companies turn to alternate suppliers, the cost of service to WWD's ratepayers who purchase water from these water truck companies would likely increase due to higher transportation costs incurred to transport water from alternate suppliers. Accordingly, the Commission finds that imposing an RPZ unit requirement on water trucks in the manner sought by WWD would unjustly impact WWD's ratepayers.

Furthermore, the Commission emphasizes that Providence Water, which requires water trucks to use an RPZ unit, supplies and stores its *own* RPZ unit on site for use by water trucks rather than requiring each water truck to purchase an RPZ unit and have its driver transport, set up and then remove the device after fill-up. WWD has failed to adequately explain why it cannot adopt a similar approach, as advocated

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<sup>68</sup> Providence Water Board v. PUC, 708 A.2d 537, 544 (R.I. 1998).

by the Division. The Commission finds the approach advocated by the Division to be reasonable because it gives WWD the discretion to impose an RPZ unit requirement to protect its water supply without placing unreasonable economic and physical burdens upon water truck operators.

WWD objects that it cannot adopt the Division's recommendation to attach an RPZ unit to its hydrant for use by water trucks because doing so would interfere with fire protection and violate R.I.G.L. § 23-37-4, which prohibits the obstruction or interference with the use of a fire hydrant. The record indicates, however, that the RPZ unit could be situated on the ground adjacent to the hydrant, with a short hose and cross-connector running from the hydrant to the water truck. In this configuration, the RPZ unit could be easily and quickly detached from the hydrant by the Woonsocket Fire Department, if necessary, for fire protection purposes. Accordingly, the Commission finds that an RPZ unit so situated and attached to the hydrant would not constitute a prohibited obstruction within the meaning of R.I.G.L. § 23-37-4.

G. HOURS OF SERVICE FOR WATER TRUCK SALES

The last issue in dispute concerns the hours during which WWD must provide service to water trucks. The record indicates that since 1994, WWD has serviced water tank trucks from 8:00 a.m. to 4:00 p.m., Monday through Saturday. WWD failed to present any persuasive evidence why it cannot continue to provide this service during these

hours. As a result, the Commission finds it is reasonable for WWD to continue to service water tank trucks during the hours it has done in recent years.<sup>69</sup>

### CONCLUSION

At an open meeting held on February 21, 2001, the Commission considered the evidence presented and found the Division's recommendations as set forth in Mr. Mancini's pre-filed testimony dated December 11, 2000 as reasonable and in the best interest of the ratepayers.

Accordingly, it is

(16744) ORDERED:

1. The May 2, 2000 petition of Woonsocket Water Division to de-tariff water truck sales is hereby denied and dismissed.
2. Woonsocket Water Division is permitted to restrict water truck sales under the circumstances outlined in the Water Supply Management Plan, Section 5, entitled "Emergency Demand Management."
3. Woonsocket Water Division is permitted to impose an aggregate daily limit on water truck sales of not more than 12 truckloads or 120,000 gallons per day, whichever is less.

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<sup>69</sup> To avoid hardship to WWD, water trucks must arrive at WWD's facility reasonably prior to 4:00 p.m. so that WWD can complete the service by 4:00 p.m.

4. Woonsocket Water Division is permitted to require water trucks to wait outside the gate of the Manville Road treatment facility until the water truck parked inside the facility's yard has completed its filling operation and exited the gate.
5. Woonsocket Water Division is permitted to require water trucks to purchase and utilize a single check valve back-flow prevention device in order to obtain service from the hydrant located at the Manville Road treatment facility.
6. Alternatively, Woonsocket Water Division is permitted to require water trucks to use a reduced pressure zone ("RPZ") back-flow prevention device, but only if Woonsocket Water Division (a) at its *own* expense purchases, stores and operates the RPZ unit at the service site, and (b) attaches the RPZ unit directly or indirectly to the hydrant used in servicing water trucks in a manner which permits quick and easy detachment of the device for fire protection purposes.
7. Woonsocket Water Division shall continue to provide service to water trucks from 8:00 a.m. to 4:00 p.m., Monday through Saturday.
8. Woonsocket Water Division shall act in accordance with all other findings and instructions contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND ON FEBRUARY 21,  
2001 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER  
ISSUED OCTOBER 17, 2001.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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Kate F. Racine, Commissioner

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Brenda K. Gaynor, Commissioner