

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY :
BOARD'S REQUEST FOR APPROVAL : DOCKET NO. 4022
TO APPLY \$5 MILLION PROPERTY TAX REFUND :

REPORT AND ORDER

I. Providence Water Supply Board's Request

On December 10, 2008, Providence Water Supply Board ("Providence Water" or "Company") filed a Request for Approval to use a \$5 million property tax refund from Scituate to establish a Watershed Protection Restricted Fund ("Proposal") with the Public Utilities Commission ("Commission"). As part of its filing, Providence Water submitted the Pre-Filed Direct Testimony of Boyce Spinelli, Deputy General Manager – Administration of Providence Water in support of the Proposal.

Mr. Spinelli explained that the dispute over property taxes between Providence Water and the Town of Scituate ("Town") arose upon the expiration of a tax treaty that covered the years 1991-2000.¹ The result of the expiration of the tax treaty was an increase in value of Providence Water's property. Therefore, for each year since 2001, Providence Water initiated appeals on the overall valuation and the failure of the Town to grant forest land tax classification.² According to Mr. Spinelli, negotiations between Providence Water and the Town over the years were not successful until a Superior Court Order "directed the Town's tax assessor to classify Providence Water's forest land as forest land for tax purposes."³ Mr. Spinelli indicated that while the tax assessor thereafter

¹ The original period covered by its treaty was 1991-1995. At the end of the period, the Town and Providence Water agreed to renew its treaty for a second period, 1996-2000. Providence Water Exhibit 1 (Pre-Filed Direct Testimony of Boyce Spinelli), pp. 2-3.

² *Id.*

³ *Id.* at 4.

classified the forest land properly, the value of the forest land was increased in excess of the recommended maximum.⁴ Following this, Mr. Spinelli noted that the parties agreed to attempt to reach a resolution and each hired an independent appraiser. According to Mr. Spinelli, the average difference between the two appraisals was in excess of \$90 million which equated to an average annual difference in taxes in excess of \$2.5 million.⁵ Despite these differences, Mr. Spinelli indicated that the parties were successful in reaching a negotiated proposed tax agreement that was approved by the Providence Water Supply Board and the Scituate Town Council.⁶

Mr. Spinelli explained that the tax agreement resulted in a \$5 million property tax refund for tax years 2001-2007 and an additional estimated \$9 million reduction in taxes for tax years 2008-2017. In addition, the tax treaty provides for Providence Water to pay no additional taxes to Scituate during the ten year term 2008 to 2017 on any improvements to property owned by Providence Water nor on any additional property acquired in Scituate during the term of the Proposal which is the subject of this docket.⁷ Scituate also agreed to classify Providence Water's DEM-certified forest land as such for tax purposes during the period 2008-2017.⁸ Mr. Spinelli indicated that due to the large dollar amount involved and the potential litigation risk involved, Providence Water deemed the tax agreement, which provides for stability and predictability, to be reasonable.⁹

⁴ *Id.* at 5.

⁵ *Id.* at 5-6.

⁶ *Id.* at 6-7.

⁷ *Id.* at 7-8.

⁸ *Id.* at 9.

⁹ *Id.* at 9-10.

With regard to the Proposal to deposit the \$5 million refund into a Watershed Protection Restricted Fund (“WPRF”) for the purpose of acquiring watershed property in Scituate, Mr. Spinelli indicated that the funds would have to be spent or contractually committed over a maximum five year period at a rate of at least \$1 million per year. Specifically, Mr. Spinelli stated, “if less than \$1 million is spent and/or committed on a yearly basis, measured cumulatively on each anniversary of the effective date of the agreement, then the agreement provides that the PUC shall redirect such unspent and/or uncommitted funds for the benefit of the ratepayers of Providence Water.”¹⁰ He stated that this use of the refund would be in the best interest of ratepayers because it would advance the goal of expanding the watershed. The watershed, according to Mr. Spinelli, “protect[s] the quality, reliability and purity” of Providence Water’s water source.¹¹ The Proposal included the creation of an Advisory Board for the selection and evaluation of properties.¹² He listed three primary criteria that would be used to assess and evaluate land considered for purchase:

(1) The property provides the protection of water resources...(2) The property poses a possible threat to the water resources if developed. (3) The property abuts and/or provides for increasing the size, protection and effectiveness of existing public or privately conserved lands contiguous to other property owned by the Water Supply Board.”

Therefore, he maintained that “any qualifying watershed property purchased from the proceeds of the [WPRF] will have a direct and immediate benefit to all of Providence Water’s ratepayers.”¹³ He noted that the WPRF cannot be used for fencing and signage.

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 11.

¹² Providence Water Exhibit 1 (Exhibit 1 to Boyce Spinelli’s Testimony - Tax Agreement), p. 5.

¹³ Providence Water Exhibit 1, p. 12.

Such costs would come out of the Water Quality Protection Fund which would also be freed up “to acquire watershed land outside of Scituate.”¹⁴

Finally, Mr. Spinelli indicated that there does not appear to be a shortage of land available for acquisition. However, in the event Providence Water found that it was unable to expend or commit \$1 million each year, the Commission would redirect the unspent and/or uncommitted funds to the benefit of all ratepayers.¹⁵

II. Hearing

After duly published notice, on March 24, 2009, the Commission conducted an evidentiary hearing at its offices at 89 Jefferson Boulevard, Warwick, Rhode Island. The following appearances were entered:

FOR PROVIDENCE WATER:	Michael R. McElroy, Esq.
FOR THE DIVISION:	William K. Lueker, Esq. Special Assistant Attorney General
FOR THE COMMISSION:	Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel

Following public comment supporting Providence Water’s Proposal, the Company presented Boyce Spinelli, Deputy General Manager for Administration, Jeanne Bondarevskis, Director of Finance, and Richard Blodgett, Manager of Environmental Resources, in support of its Proposal. Mr. Spinelli provided a synopsis of the history of the tax disputes, an overview of the negotiation process, and a summary of the resulting tax treaty.¹⁶ With regard to the schedule of tax payments to be made under the tax treaty, Mr. Spinelli clarified that in the event the Town does not increase its tax levy by the

¹⁴ *Id.*

¹⁵ *Id.* at 13.

¹⁶ Tr. 3/24/09, pp. 26-33.

statutory maximum each year, the payment made to the Town by Providence Water would be adjusted downward accordingly.¹⁷

Mr. Blodgett indicated that the watershed is approximately 60,000 acres, or 92 square miles, of which, approximately 28 percent is controlled by Providence Water. He noted that Providence Water owns approximately 14,000 acres in Scituate, of which approximately 10,000 acres are DEM certified forest land.¹⁸ On cross-examination, he opined that there would be sufficient land available for purchase. He explained that according to Providence Water's appraisers, home values tend to fluctuate more than raw land, the type of property Providence Water typically acquires. Therefore, while land prices have been falling the reductions have not been as dramatic as with housing.¹⁹ He noted that based on historical averages, one could expect Providence Water to pay approximately \$8,000 per acre, enabling the Company to acquire approximately 600 acres of land.²⁰ However, he noted that the \$8,000 would not include appraisals and surveys which could add another \$1,000, but "varies quite a bit."²¹

With regard to Providence Water's acquisition procedure, Mr. Blodgett noted that there are five categories, each of which has a number of points associated with it. Further, he explained that each of the five categories includes a more refined numbering system which allows properties under consideration to be ranked.²² However, he agreed that the tax agreement between Providence Water and the Town, which creates a Watershed Protection Advisory Board ("Advisory Board") made up of Providence Water

¹⁷ *Id.* at 38-39.

¹⁸ *Id.* at 37-38.

¹⁹ *Id.* at 42.

²⁰ *Id.*

²¹ *Id.* at 43.

²² *Id.* at 44.

and Town members, does not require the Advisory Board to follow Providence Water's procedure. Mr. Spinelli maintained that, despite the fact that the Providence Water procedures are not contained in the tax agreement, the Advisory Board will still utilize a similar process through the language of the tax agreement. Further, Mr. Blodgett noted that Providence Water's representatives on the Advisory Board would propose properties based on Providence Water's scoring criteria. He also opined that while the Town may have its own proposed parcels for consideration, he believed that because of the language of the tax agreement regarding watershed acquisition, the two parties should be able to reach consensus.²³

Discussing the acquisition process further, Mr. Blodgett noted that historical fluctuations in the number of properties purchased annually has resulted from the "delicate" nature of real estate transactions. He indicated that valuation can lead to challenges in closing a deal. In response to a question of whether the \$1 million minimum annual spending/commitment requirement could cause inflated pricing, particularly in an economy experiencing a downturn, Mr. Spinelli emphatically stated that he had no such concerns and the intent of the provision was to avoid "tying up" the funds for an unreasonable period of time. Both he and Mr. Blodgett indicated that there would be no pressure on the Advisory Board "to meet the million dollar quota."²⁴

Mr. McElroy explained that the provision that would allow the Commission to approve acquisitions before finalization was inserted to protect the tax agreement in the event the Commission expressed concern regarding the use of ratepayer dollars in each particular transaction. However, Mr. Spinelli expressed hope that the Commission would

²³ *Id.* at 45-51. Mr. Blodgett also discussed the various acquisition methodologies that could be negotiated. *Id.* at 53-58, 80-81..

²⁴ *Id.* at 72-75.

not believe that to be necessary. Finally, Mr. McElroy stated that the effective date would be the later of the date on which the last approval is received by Providence Water or a bond is issued by the Town and funds are deposited by Providence Water.²⁵

Finally, at the close of the hearing, the Division's legal counsel stated that refunds can be used to benefit ratepayers through various methodologies. However, he indicated that unlike simple rate reductions or rate refunds which provide an immediate short-term benefit, the proposal made by Providence Water for Commission consideration will provide a long-term benefit. The protection of watershed land should protect the quality and quantity of the drinking water for the long term. Therefore, the Division believed that "the proposal offers a significant long term benefit to all ratepayers and...is in the ratepayers' interest."²⁶

III. Commission Findings

At its open meeting held on March 31, 2009, the Commission considered Providence Water's proposal and approved the establishment of a Water Protection Restricted Fund to be funded with the \$5 million property tax refund. The Commission found that the proposal will provide a long term benefit to the ratepayers by protecting the quality and quantity of water provided by the Company.

The acquisition procedures appear to provide a similar level of protection to ratepayers from the ability of a landowner to demand a price not supported by the market as Providence Water's procedures currently in place. Further, because the Providence

²⁵ *Id.* at 62-65. With regard to accrual of interest in the new restricted account, Ms. Bondarevskis noted that interest has never been treated separately from the principal in the account, but has accrued within it. However, Mr. McElroy confirmed that nothing in the tax agreement addressed application of the interest that the account will earn. *Id.* at 67-68.

²⁶ *Id.* at 81-82.

Water members of the Advisory Board will follow the scoring methodology they currently use, there should be a level of consistency in the acquisition process.

Finally, the Commission will not require Providence Water to seek prior Commission review of each acquisition, but will require Providence Water to provide annual reporting on the properties acquired, including parcel identification, summary of the appraisals, final purchase price, and the closing date. This filing shall include an accounting of the funds spent and/or committed during the prior twelve month period and, if the \$1 million requirement has not been met, a proposal to the Commission to redirect the unspent or uncommitted funds for that year. On May 14, 2009, Providence Water filed a fully executed Tax Agreement with the Commission and deposited the tax refund into the WPRF. Therefore, the annual filing requirement set forth in this paragraph shall be based on twelve month periods commencing May 14th and ending May 13th of the following year. The first report shall be due on or before June 14, 2010 and annually thereafter.

Accordingly, it is hereby,

(19691) ORDERED:

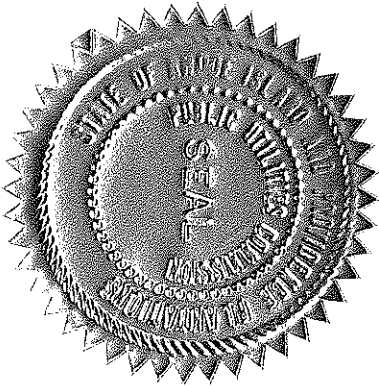
1. Providence Water Supply Board's Request for Approval to use a \$5 million property tax refund from Scituate to establish a Watershed Protection Restricted Fund is hereby approved.
2. Providence Water Supply Board shall file annually with the Commission on or before June 14th, an accounting of the funds spent and/or committed during the prior twelve month period commencing May 14th and ending May 13th of the year in which the report is being submitted, and if the \$1

million requirement has not been met, a proposal to the Commission to redirect the unspent or uncommitted funds.

3. Providence Water Supply Board shall file annually with the Commission on or before June 14th, a report of the properties acquired, including parcel id, summary of the appraisals, final purchase price, and the closing date.
4. Providence Water Supply Board shall comply with all findings and instructions contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON MARCH 31, 2009. WRITTEN ORDER ISSUED JULY 7, 2009.

PUBLIC UTILITIES COMMISSION



Elia Germani, Chairman

*Robert B. Holbrook, Commissioner

Mary E. Bray, Commissioner

*Commissioner Holbrook concurred with the Commission's decision, but has since retired and is unavailable for signature.