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September 13, 2013

Luly E. Massaro, Esq., Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Providence Water Supply Board – Docket No. 4406

Dear Luly:

Enclosed for filing are an original and nine copies of Providence Water Supply Board's Objection to Bristol County Water Authority's Motion to Strike Objection, Compel Further Answers and/or Strike Testimony and Providence Water Supply Board's motion for a Protective Order.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc:tmg
cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD : DOCKET No. 4406

**PROVIDENCE WATER SUPPLY BOARD'S OBJECTION TO
BRISTOL COUNTY WATER AUTHORITY'S MOTION TO STRIKE
OBJECTION, COMPEL FURTHER ANSWERS AND/OR
STRIKE TESTIMONY AND PROVIDENCE WATER SUPPLY BOARD'S
MOTION FOR A PROTECTIVE ORDER**

INTRODUCTION

On September 3, 2013, Bristol County Water Authority (BCWA) filed a motion to strike objection, compel further answers and/or strike testimony related to BCWA's data requests 2-3(b) and (c).¹

BCWA 2-3(b) and (c) request the following:

- b. Please describe any progress Providence Water has made in obtaining a new Central Operations Facility since 2010.
- c. Please provide all information Providence has regarding a new Central Operations facility, including location, estimates on cost of purchase or cost of lease, construction costs, and operation costs.

Providence Water's response was as follows:

b.&c. Objection. This is not public information per R.I.G.L. § 38-2-2 (4) (B), (I), (K), and (N). Without waiving this objection, Providence Water has been actively looking for locations that provide easy access to all of our assets. Providence Water also has worked with Dimeo Construction Company to thoroughly analyze our current and future operations. From this analysis, Dimeo developed an opinion of probable construction cost for the Central Operations Facility of \$36 million (in 2013 dollars). This cost is a comprehensive construction cost that includes all expenses required to make the Central Operations Facility "move-in" ready. This cost does not include yearly operational costs, land purchase or lease costs, and any site remediation costs that may be required.

¹ Subsequently, Kent County Water Authority and the City of East Providence joined in this motion, but provided no substantive argument. Moreover, we question whether an intervenor that did not propound the subject data requests can file a motion to compel responses to data requests filed by another party. Accordingly, we will not address the motions of KCWA or the City of East Providence further, except to state that we object to both motions for the reasons stated in this objection.

Providence Water objected because much of the information sought is confidential business and financial information protected by Rule 1.18, and because it is not public information under R.I.G.L. § 38-2-2, the Access to Public Records Act. Nevertheless, Providence Water went on to answer the request in some detail. Because Providence Water's objection was not filed within the 10-day period set forth in Rule 1.18(c)(3), Providence Water concedes that the objection was not timely filed. Nevertheless, this Commission has the authority to grant an extension of time. This is especially important in order to protect confidential business and financial information which is not public under the Access to Public Records Act. Moreover, the Commission can grant a protective order which protects against the "disclosure of confidential business and financial information" under Rule 1.18(e), even outside of the 10-day period of time, which does not apply to Rule 1.18(e).

Providence Water is prepared to provide more information to supplement its original response to BCWA 3-2 (b) and (c), but Providence Water respectfully requests that the Commission first issue a protective order protecting Providence Water from having to disclose confidential business and financial information related to its Central Office Facility. To the extent any of the information requested is "site specific," the disclosure of sites being considered by Providence Water could harm not only Providence Water, but its ratepayers. Disclosure of sites under consideration could put Providence Water at a significant disadvantage in terms of negotiating for the ultimate acquisition or leasing of property for a Central Office Facility. If the public becomes aware that Providence Water is considering one or more particular locations, prices for property in that area could be driven up by real estate speculators.

It is for that reason that this sort of information is not only protected “from disclosure” as “confidential business and financial information” under Rule 1.18(e), but is also protected from disclosure under the Access to Public Records Act, which protects “commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature” (R.I.G.L. § 38-2-2(4)(B); “reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into” (R.I.G.L. § 38-2-2(4)(I); “preliminary drafts, notes, impressions, memoranda, working papers, and work product . . .” (R.I.G.L. § 38-2-2(4)(K); and “the contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned . . .” (R.I.G.L. § 38-2-2(4)(N)).

All of these provisions taken together evidence a clear legislative intent to protect against the disclosure of “site specific” information that could harm a public entity and the ratepayers (or taxpayers) who fund it. It is for that reason that Providence Water is willing to provide additional documentation to supplement its original response to BCWA 2-3 (b) and (c), but is asking that this Commission issue a protective order under Rule 1.18(e) allowing Providence Water not to disclose site specific confidential business and financial information.

Rule 1.2(g) states that “any claim or privilege shall be governed by the policy underlying the Access to Public Records Act” and that the Commission may make a finding that certain documents are privileged. In this regard, the Commission has made

the Access to Public Records Act the touchstone for determining what constitutes privileged, confidential business and financial information, and as stated above, the Access to Public Records Act provides that the site specific information regarding Providence Water's Central Office Facility is information that should not have to be disclosed.

Finally, to date, Providence Water has received, from BCWA, including subparts, 227 data requests. Providence Water is diligently working to prepare its rebuttal testimony, which must be filed on or before September 27, 2013. Providence Water therefore requests that it be given until one week after the filing of its rebuttal testimony to supplement its response to BCWA 2-3 (b) and (c), so that its supplemental response would be due on or before October 4, 2013.²

WHEREFORE, Providence Water respectfully requests:

1. That a protective order be entered stating that Providence Water need not disclose "site specific" confidential business and financial information or non-public information defined in R.I.G.L. § 38-2-2(4)(B), (I), (K) and (N) in supplementing its response to data request 2-3 (b) and (c); and

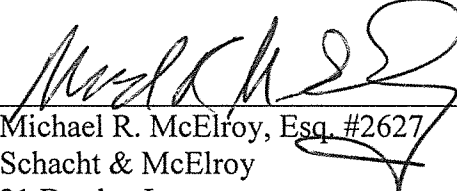
² As required by Rule 1.15(b), Providence Water states that it asked BCWA to agree to allow Providence Water until October 4 to supplement its response and to agree to protect the confidential information, but BCWA refused. We also need to note that BCWA has argued in its Memorandum that Providence Water allegedly did not file its responses to BCWA's 2nd set of data requests within the 21-day period provided for by Rule 1.18. This is not correct. Although BCWA, through its counsel, emailed the 2nd set of data requests to Providence Water on Friday, July 26, 2013, at 4:26 p.m., those data requests were emailed to Providence Water after its offices were closed for the day and also after the Commission's offices were closed for accepting filings by Rule. Pursuant to Rule 1.2(h) "the offices of the Commission will be open to accept filings Monday through Friday from 8:45 a.m. to 3:45 p.m. . . ." The BCWA filing on a Friday at 4:26 p.m. by electronic mail was not received by Providence Water until Monday, July 29, 2013. Rule 1.17(c) makes it clear that "the time for response shall commence on the date of receipt." Providence Water filed its responses on August 19, 2013, which was 21 days after July 29, 2013, the day Providence Water received the data requests.

2. That an order be entered providing that Providence Water may supplement its response to BCWA 2-3 (b) and (c) on or before October 4, 2013.

For the convenience of the Commission, a copy of BCWA 2-3 is attached hereto as Exhibit 1.

Respectfully submitted,
PROVIDENCE WATER SUPPLY BOARD
By its attorney

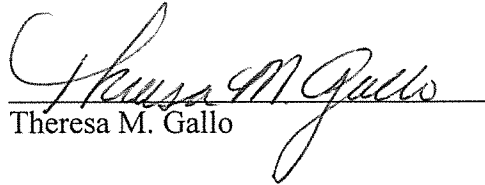
Dated: September 13, 2013



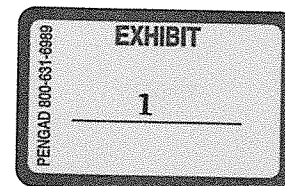
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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2013, I caused to be electronically mailed a copy of the within to all parties set forth on the attached Service List, and regular mailed copies to Luly Massaro, Commission Clerk, Peter D. Ruggiero, Esq., and Robert Watson.


Theresa M. Gallo

Providence Water Docket 4406



**Data Requests of the
Bristol County Water Authority
Set 2**

BCWA 2-3: With regard to the response to KCWA 2-15:

- a. The Pro-Forma Amount of Schedule HJS-9 for CY 2014 is listed as \$2,450,000 for the Capital Fund. Exhibit PG-5 lists the Capital Fund as \$4,180,000, \$3,055,000, \$2,655,000, \$2,555,000, \$2,425,000 for FY 2013 through FY 2017, respectively, including \$2,400,000 per year for New PW Central Operations Facility.

The response to KCWA 2-15 supplied a memo dated November 15, 2010, that the existing Capital Fund had sufficient funds to pay for the annual cost of obtaining a new facility. Please clarify the amount requested for the Capital Fund.

- b. Please describe any progress Providence Water has made in obtaining a new Central Operations Facility since 2010.
- c. Please provide all information Providence has regarding a new Central Operations facility, including location, estimates on cost of purchase or cost of lease, construction costs, and operation costs.

Response:

- a. The amount requested for the Capital Fund is \$2,450,000.
- b. & c. Objection. This is not public information per R.I.G.L. 38-2-2 (4) (B), (I), (K), and (N). Without waiving this objection, Providence Water has been actively looking for locations that provide easy access to all of our assets. Providence Water also has worked with Dimeo Construction Company to thoroughly analyze our current and future operations. From this analysis, Dimeo developed an opinion of probable construction cost for the Central Operations Facility of \$36 million (in 2013 dollars). This cost is a comprehensive construction cost that includes all expenses required to make the Central Operations Facility "move-in" ready. This cost does not include yearly operational costs, land purchase or lease costs, and any site remediation costs that may be required.