

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD :

DOCKET NO. 4618

**OBJECTION OF THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES
TO BRISTOL COUNTY WATER AUTHORITY'S
MOTION FOR RELIEF FROM ORDER**

I. INTRODUCTION

Bristol County Water Authority ("BCWA") has filed a Motion for Relief from Order contending that the Providence Water Supply Board ("PWSB") incorrectly allocated Central Operations Facility ("COF") costs (beyond PILOT) in the amount of \$649,579 to wholesale customers.

The Division of Public Utilities and Carriers ("Division") objects to BCWA's Motion for Relief from Order. BCWA's motion is procedurally flawed. More importantly, based on the history of the Commission's rulings in Docket Nos., 4406, 4517 and the pending docket, as well as accepted principles of rate design, the Commission appropriately permitted PWSB to allocate COF costs (beyond PILOT) to wholesale customers, subject to requiring a new cost of service study in PWSB's next rate case. The Commission should deny BCWA's Motion for Relief from Order.

II. PROCEDURAL GROUNDS SUPPORTING THE DIVISION'S OBJECTION

A. BCWA's Motion Is Not Ripe Under Rule 1.28(b)(6)

BCWA has filed its motion pursuant to Rule 1.28(b)(6).¹ On January 24-25, 31 2017 and February 1, 2017, the Commission heard the merits of Docket No. 4618 which included a proposed PWSB and Division Settlement Agreement dated January 23, 2017. On February 10, 2017, the Commission decided the merits of the docket at Open Meeting. The Commission has yet to issue a written Order in Docket No. 4618.

By its terms, Rule 1.28(b)(6) only affords potential relief to a moving party such as BCWA after the Commission has issued a written Order. See also Rule 1.27(a) (“[T]he Commission will issue its orders in writing in every proceeding”). No such Order has been issued in the pending matter. Accordingly, BCWA's motion pursuant to Rule 1.28(b)(6) is not ripe.

B. BCWA's Motion Does Not Satisfy The Requirements Of Rule 1.26(a).

Since the Commission has not issued a written Order in Docket No. 4618, BCWA's Motion for Relief from Order could more properly be viewed as a Motion to Reopen

¹ That rule provides in pertinent part as follows:

1.28 RELIEF FROM ORDER

(b) Mistake, inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, Other. On motion and upon such terms as are just, the Commission may grant relief for the following reasons: . . .

(6) Any other reason justifying relief from the operations of *the order.*

(emphasis added)

Proceedings pursuant to Rule 1.26(a).² However, such a motion can only be made for: (i) the purpose of taking additional evidence, (ii) may only succeed if it sets forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, and (iii) is supported for good cause shown. Commission's Rules of Practice and Procedure, Rule 1.26(a). See Rule 1.20(m) ("The record in a proceeding shall close after the briefs, if any, have been filed, or otherwise after the dispositive open meeting...").

In the pending matter, BCWA does not seek to take additional evidence; BCWA has not set forth any facts requiring reopening of the proceedings that have occurred since the conclusion of the hearing that identify material changes in fact or of law; and BCWA's motion is not supported by "good cause shown." Even if the Commission were to recast BCWA's Motion for Relief from Order as a Motion to Reopen Proceedings, the Commission would have to deny the motion. BCWA has not satisfied any of the criteria necessary for a prevailing on Rule 1.26(a) motion.

² That Rule provides in pertinent part as follows:

1.26(a) REOPENING PROCEEDINGS

- (a) Except as provided in Rule 1.26(a)(3), at any time after the conclusion of a hearing in a proceeding but before the issuance of the written order, any party to the proceeding may, for good cause shown, move to reopen the proceedings for the purpose of taking additional evidence. Copies of such motion shall be served upon all participants or their attorneys of record, and shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or law alleged to have occurred since the conclusion of the hearings, and shall in all other respects conform to the applicable requirements of Rule 1.5 through 1.7, inclusive.

C. **The Commission Correctly Permitted PWSB To Allocate COF Costs (Excluding PILOT) To Wholesale Customers Subject To Requiring A New Cost Of Service Study In PWSB's Next Rate Case.**

BCWA contends that PWSB may not allocate COF costs (excluding PILOT) to wholesale customers without employing a functional use methodology for the COF. BCWA Motion at 5. In the absence of requiring PWSB to employ a functional use methodology for the COF, BCWA advocates that the Commission should not allocate any COF costs (excluding PILOT) to wholesale customers but rather should allocate these costs only to retail customers. Id. at 7.

While the Rhode Island Supreme Court has acknowledged the importance of cost of service studies in the rate-making process such studies are not the sole basis for setting rates; such studies must be tempered by judgment. United States v. Rhode Island Public Utilities Comm'n, 393 A.2d 1092, 1096 (R.I. 1978). Fully allocated cost-of-service studies are not the only element to be considered by the Commission in determining the propriety of a rate design. Other factors, such as value of service to the community, historical rate design, adequacy of service, environmental considerations, the public benefit and the like, may warrant a departure from or a modification of the rates dictated by cost-of-service. Id. at 1097.

An insurmountable difficulty with BCWA's position is that the COF is not fully operational. Tr.³ at 33. Accordingly, obtaining good data on actual COF functions to properly allocate COF costs is not possible now. Tr. at 121-23. Rebuttal Testimony of Harold J Smith at 5. In the absence of appropriate data relating to actual COF functions, the Commission was entitled to rely on Record and expert testimony to justify a temporary departure from a strict cost-of-service method in rate making relative to new COF expenses. United States v. Rhode

³ As used herein the term "Tr. ___" refers to the Transcript of Hearing dated January 24, 2017 in Docket No. 4618.

Island Public Utilities Comm'n, 635 A.2d 1135, 1141 (R.I. 1993). See also Michaelson v. New England Tel. & Tel Co., 404 A.2d 799, 813 (R.I. 1979) (the commission can legitimately delay requiring cost of service study if it believes company cannot compile the information).

Allocating \$0 of COF costs to wholesale customers as BCWA contends also does not make any sense considering the rationale underlying the Commission decision-making that took place in Docket Nos. 4406 and 4571. In Docket No. 4406, the Division, PWSB, BCWA, Kent County Water Authority and the City of Warwick entered a revised settlement agreement that included \$2.45 Million in revenue for the COF. In Re: Providence Water Supply Board Application to Change Rate Schedules, Docket No. 4406, Order No. 22062 at 23-24. At an Open Meeting held on November 22, 2013, the Commission unanimously voted to remove \$2.40 Million in revenue from the settlement because the costs associated with the COF were not known and measurable. Id. at 26-27. The Commission allocated the benefit of the removal of the \$2.40 Million exclusively to retail customers. Id. at 26.

The basis for the Commission's decision-making in this regard was that had a portion of the \$2.40 Million benefit been allocated to wholesale customers, the wholesale customers would have received a rate decrease. Tr. at 131. As it was, removing \$2.40 Million from the settlement and attributing the benefit to exclusively retail customers resulted in an increase to wholesale customers of only \$327,514. See Second Revised Settlement Agreement, Schedule JDM-19 (\$16,702,791 - \$16,375,278). The parties subsequently filed a Second Revised Settlement Agreement that incorporated the Commission's November 22, 2013 ruling. See Order No. 22062 at 28.

In Docket No. 4571, PWSB filed an application to fund a bond issuance to support the purchase of the COF in the amount of \$2.448 Million. In Re Providence Water Supply Board

Abbreviated Rate Filing, Docket No. 4571, Order No. 22065 at 1. In its filing, PWSB sought to allocate the cost of the \$2.448 Million solely to retail customers because it was these customers that had received the benefit of the removal of \$2.40 Million in Docket No. 4406. Docket No. 4571, Direct Testimony of Harold J. Smith, at 4.

In deciding the matter, the Commission approved of PWSB's proposed allocation methodology. See Order No. 22065 at 2 (where the Commission acknowledges that PWSB is requesting the same amount that was previously disallowed in Docket No. 4406 and maintains that it would be appropriate to allocate it to customers who previously benefitted). The Commission granted PWSB a "\$2.077 in additional rate revenue plus 2.0% to fund the operating reserve under the terms of the Second Revised Settlement approved in Docket No. 4406." See Order No. 22065 at 25.

Considering the unique purpose of Docket No. 4571—to return the cost burden of a rate increase to the class of ratepayers who had previously benefited from a prior decrease—continued assignment of COF costs exclusively to retail customers (or \$0 to wholesale customers) in the pending docket does not make any sense. The Commission typically adheres to accepted principles of rate design. See e.g. Rhode Island Public Utilities Comm'n, 635 A.2d at 1142 (upholding the Commission's acceptance of Bonbright's ten principles for a sound rate structure including the avoidance of undue discrimination in rate relationships to be, if possible, compensatory, *i.e.*, subsidy free with no intercustomer burdens).

Just as importantly, as wholesale customers will benefit from the COF they should bear some of its costs. The Record is replete with evidence supporting this conclusion. In his Surrebuttal Testimony in this docket, Mr. Mierzwa testified:

The new COF will increase Providence Water's operational efficiency which will benefit both retail and wholesale customers. In addition, Providence Water's laboratory testing facilities will be located at the new COF (Response to BCWA 1-25). These facilities will assist in ensuring water quality for all customers of Providence Water.

Surrebuttal Testimony of Jerome D. Mierzwa at 4. See also Tr. at 65. Given the benefits of the new COF that will accrue to wholesale customers, Mr. Mierzwa concluded, "it would be unreasonable to allocate none of the costs associated with the new COF to wholesale customers."

Id.

Mr. Smith testified to the same effect:

Q. In that case, do you agree that the COF should be considered a 100 percent retail cost?

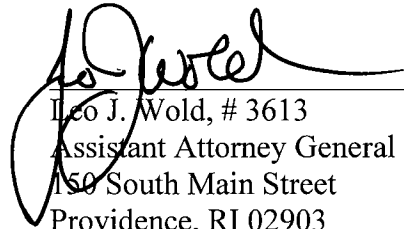
A. I do not. The COF is a capital asset, which will be used primarily to ensure effective operation of the Providence Water system, which includes both functions and services that are retail only and others that are common to all (retail and wholesale assets). To argue that wholesale customers receive no benefit from such an asset is unreasonable...

Rebuttal Testimony of Harold J. Smith at 5. Substantial evidence exists on the Record supporting the Commission's decision permitting PWSB to allocate COF costs (excluding PILOT) to wholesale customers subject to requiring a new cost of service study in PWSB's next rate case.

III. CONCLUSION

For the foregoing reasons the Division requests that the Commission deny BCWA's Motion for Relief from Order.

DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorneys,

A handwritten signature in black ink, appearing to read "Leo J. Wold", is written over a horizontal line. The signature is fluid and cursive.

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CERTIFICATE OF SERVICE

I certify that the within objection was forwarded by e-mail to counsel on the Service List in the above matter on the 17th of April, 2017.

