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March 7, 2022

Ms. Luly Massaro, Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**Re: *Providence Water Supply Board – Docket 4994***

Dear Ms. Massaro:

Enclosed herewith please find an original and nine copies of the following document:

1. Bristol County Water Authority's Post-Hearing Memorandum regarding Providence's Compliance Filing in the above captioned Docket.

Please be advised that an electronic copy of this document has been sent to the service list. Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf  
Enclosures

cc: Service List

STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD:

DOCKET NO. 4994

THE BRISTOL COUNTY WATER AUTHORITY'S POST-HEARING MEMORANDUM

I. INTRODUCTION

As the Commission requested, this Post-Hearing Memorandum is narrowly focused and will only address two questions:

1. Why should the Rhode Island Public Utilities Commission adopt the rates proposed by the Bristol County Water Authority ("BCWA") in this compliance filing?
2. Why must individual wholesale rates remain in place?

This memorandum will serve as supplement to the BCWA's testimony, Motion In Limine, and the closing argument made by counsel. By focusing on just these two issues, the BCWA does not waive its position or arguments on any other issues it addressed in this Docket.

II. ARGUMENT

**1. Why Should The Rhode Island Public Utilities Commission Adopt The Rates Proposed By The BCWA In This Compliance Filing?**

The Rhode Island Public Utilities Commission ("Commission") should adopt the rates set forth in Michael Maker's surrebuttal testimony schedules for seven primary reasons:<sup>1</sup>

1. The BCWA's rates are based entirely on the Base Extra Capacity Method previously approved by the Commission in this Docket.

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<sup>1</sup> This list is not exhaustive and the BCWA incorporates the testimony of Michael Maker, the BCWA's Motion In Limine, and the closing argument made by counsel at the hearing.

2. The Base Extra Capacity Method of allocating rates is a generally accepted rate making methodology set forth in the American Water Works Association Manual M1, Principles of Water Rates, Fees, and Charges (7th Edition) (“M1 Manual”), which sets the industry standard for generally accepted ratemaking principles.
3. The BCWA’s rates do not result from two different methodologies to allocate costs within the same cost-of-service study.
4. The BCWA’s use of the Base Extra Capacity Method incorporates the undisputed peaking factors of each of the seven wholesale customers.
5. The BCWA’s rates are calculated by using Providence’s cost-of-service model.
6. The BCWA’s rates incorporate Providence’s changes to the five cost allocations the Commission ordered Providence to address in its revised cost-of-service study (“Revised COSS”) – (1) Central Operations Facility Costs; (2) Non-Revenue Water Allocations; (3) Transmission & Distribution Labor Costs; (4) Unidirectional Flushing Costs; and, (5) Pumping Costs.
7. The BCWA’s rates provide for more moderate changes with much less disparity among the wholesale customers:
  - a. The BCWA’s rates only have a 24.93% spread among increases and decreases for each wholesale customer without gradualism, as opposed to 77.78% under Providence’s proposed rates.
  - b. The highest rate increase under the BCWA’s rates, without gradualism, is 17.66% for Smithfield, whereas Providence’s increase for Smithfield is 47.45% without gradualism.
  - c. The BCWA’s rates only have an 8.31% spread among increases and decreases for each wholesale customer with gradualism, as opposed to 21.93% under Providence’s proposed rates.
  - d. The highest rate increase under the BCWA’s rates, with gradualism, is 5.89% for Smithfield, whereas Providence’s increase for Smithfield is 12.00% with gradualism.

The parties in this compliance filing fundamentally disagreed about the use of Pare’s hydraulic model to allocate T&D Costs. The parties also disputed whether T&D Costs should be allocated differently than all other costs, which were allocated using the Base

Extra Capacity Method. Providence allocated T&D Costs using the hydraulic model data in two steps: (1) It determined which pipes are used by each wholesale customer; and, (2) It then determined the relative portion of each pipe assignable to each wholesale customer when more than one customer used a specific length of pipe. The BCWA argued against this use of the hydraulic modeling data because, as Providence acknowledged, it does not capture how each wholesale customer truly uses the system under their individual average days, max days and max hours.

Providence also submitted a map of its system to support its use of the hydraulic model. This map shows that Warwick and Kent County are closest to Providence's water treatment plant and seemingly would use less length of pipe than other wholesale customers. Thus, if distance from the plant were the only consideration in allocating T&D costs, then Providence's methodology would make sense.

However, as Greenville/Lincoln's witness, Jason Mumm, argued, distance from the plant and length of pipe used is not the sole consideration in allocating costs. As Mr. Mumm testified, hydraulic modeling shouldn't be used to break up Providence's network of pipelines "into very discrete individual line segments" because doing so ignores the "network effects that such a system provides" and "the hydraulic model was incapable of capturing that benefit that applies really to all users connected to those networks." (Compliance Filing Hearing Transcript, 2/16/22, p. 79, ll. 6-14) Mr. Mumm also testified that: "We have to make a determination between what exists in the transmission system and what exists in the distribution system, and it's really not

necessarily about who's using specific segments of pipe or whether those -- whether that molecule of water flowed through some smaller pipe or not." (Id. at p. 80, ll. 3-10)

So how do you allocate costs to individual wholesale customers if you treat the transmission and distribution network as a unified system? The answer lies in the Base Extra Capacity Method of cost allocation. Under this methodology, costs are not allocated based on which pipes each customer uses or their proportional share of water molecules running through those pipes. What the Base Extra Capacity Method does is assign costs based on how customers use the unified system. Mr. Smith described this methodology in his direct testimony during the original litigation of this Docket:

"I developed the cost of service analysis using the "Base-Extra Capacity Method" as outlined in the American Water Works Association's Manual M1: "Principles of Rates, Fees and Charges." This approach allocates costs to customer classes in proportion to their use of the Providence Water system. Under this approach, **costs are primarily allocated based on peak demand, both on a maximum day and maximum hour basis.** The rationale for this approach lies in the manner in which a water system is designed.

Water systems are designed to deliver water to customers to meet **both average and peak usage demands.** Accordingly, treatment, storage and pumping facilities must be designed with additional capacity to meet the peak demands, in addition to average demands. In addition, **transmission and distribution mains must also be oversized to allow for additional flow during peak demand periods.** The capacity built into Providence Water's infrastructure represents an additional cost which is incurred above and beyond what would be the case if customers used water at the same rate every day and throughout the day.

Given that that additional costs are included to provide this additional capacity, the question then becomes how those costs should be recovered from the users of the water system. **The Base-Extra Capacity Method assigns costs to users in proportion to both their average day demands and their extra capacity demands.** For example, costs which are included to provide maximum day service are allocated to users in proportion to **their maximum day usage above and beyond their average day usage.** This approach recovers extra capacity costs from customers **whose extra capacity demands** drive the need for the larger water system. (Smith Direct, p. 14, l. 17 to p. 15, l. 8, emphasis added)

Jerome Mierzwa, who testified for the Division of Public Utilities and Carriers (“Division”), offered a similar description in his direct testimony during the original litigation of this Docket: “Under the base-extra capacity method, investment and costs are first classified into four primary functional categories: base or average capacity, extra capacity, customer and fire protection.” (Mierzwa Direct, p. 6) Extra capacity costs are “operating and capital costs for additional plant and system capacity **beyond that required for average usage.**” (*Id.*) Thus, the Base Extra Capacity Method treats Providence’s system as a unified system, but allocates costs based on how customers use that system to meet their average day, maximum day and maximum hour water needs. And under this method, customers with higher peak demands pay the costs associated with those higher demands.

The answer also lies in allocating certain costs that can be directly tied to each individual wholesale customer, such as pumping and unidirectional flushing. It is undisputed that Providence only incurs pumping costs to service Greenville, Lincoln and Smithfield. The BCWA, East Providence, Warwick and Kent County are gravity fed and require no pumping. In addition, any wholesale customer not served by pipes twelve inches and smaller should not be allocated unidirectional flushing costs because Providence only flushes pipes that are twelve inches or smaller.

Providence argues that the Base Extra Capacity Method allows for the use of hydraulic modeling data to allocate rates and cited the following language from the M1 Manual:

“Page 303 under the outside wholesale rates section of the M-1 manual states in part, “Another approach to determining distribution versus transmission mains,

though less common in practice and more complex to perform, is to use system hydraulic analyses to determine which water mains, by size diameter and location, function as transmission mains. Given information on pipelines that serve transmission versus distribution functions, the associated costs of these assets may then be ascertained from the fixed asset records of the utility if these records distinguish asset costs by pipe size. If the fixed assets are not readily available or known, "average pipe (dollar per linear foot) installed costs relationships may be employed. Alternatively, the proportionate shares of diameter-weighted lengths of pipelines may be used to estimate and allocate costs to customer classes the capital and O&M costs associated with the transmission main system." (Compliance Filing Hearing Transcript, 2/17/22, p. 42, l. 24 to p. 43, l. 21)

In citing this language, Providence ignored the sentences that follow this passage in M1:

"However, care also needs to be taken in using this method because the diameter and the value of the mains may not have a meaningful relationship with the costs of service. For example, smaller mains on a system may be much older, nearly depreciated, and more costly to operate, whereas larger transmission mains may be newer and less costly to operate, or vice versa." (M1 Manual, p. 303)

There is no evidence in the record that Providence or Pare took care in using the hydraulic model data to examine the age of pipes or the costs to operate them.

As Mr. Smith acknowledged, Providence's system isn't that unique. (Compliance Filing Hearing Transcript, 2/15/22, p. 242, ll. 2-11) It is an old system that wasn't specifically designed to service each of the seven wholesale customers. (*Id.*) But none of the witnesses in this compliance filing can point to another utility using the dual methodology employed by Providence to allocate rates. Why is that? Utilities all over the country use hydraulic modeling. (Smith Compliance Rebuttal, p. 6, ll. 24-26) It is the BCWA's position that this dual methodology isn't used because it is inequitable to allocate different parts of the system using different methodologies.

A cost-of-service study shouldn't use Base Extra Capacity to capture peaking costs for all capital components of the water system (e.g., treatment plant, reservoirs, etc.), and then use hydraulic modeling data to divvy up length of pipes to allocate T&D costs. And this shouldn't be done with data from a hydraulic model that doesn't capture how each wholesale customer uses the system on their average day, max day and max hour. It is the BCWA's position that costs for all components of the system should be allocated the same way by following the Base Extra Capacity methodology all the way through. That is how Mr. Maker calculated rates, and it is these rates that should be adopted by the Commission.

## **2. Why Must Individual Wholesale Rates Remain In Place?**

The Commission's original Order in this Docket rejected a uniform wholesale rate because it was unjust and unreasonable. (Docket 4994 Order No. 23928, p.32) As Harold Smith testified during the original hearings in this Docket, a cost-of-service study should adhere to the following principles:

- The cost of providing service to a utility's customers must be recovered from those customers.
- A cost-of-service study should recognize that different types of customers generate different costs because their patterns of use or demand characteristics are different.
- A cost-of-service study allows the matching of rates charged to each group to the cost of serving them.
- Each group of customers pays its own way - no subsidies.
- A cost-of-service study should recover costs from users in proportion to their use of the system and by recognizing the impact of each class on system facilities and operations. (See Docket 4994 Order No. 23928, p.30)

The evidence introduced by the BCWA in the original litigation of this Docket clearly established that a uniform wholesale rate violated these principles. In fact, Mr. Smith acknowledged that individual wholesale rates would result in some wholesale customers receiving significant subsidies. (Docket 4994 Order No. 23928, p. 27) Furthermore, the BCWA established that individual wholesale rates are entirely consistent with the Base Extra Capacity Method. These points were not even disputed in the original litigation. The primary issue was whether Providence should examine certain “nuances” in how it serves each wholesale customer. These “nuances” did not include a completely new allocation methodology for T&D costs. The way the Commission addressed this issue was to have Providence study the effect of these nuances on the COSS and only set rates 1/3 of the way toward cost of service rates while Providence’s study proceeded. But the evidence in the record absolutely supported the implementation of individual wholesale rates.

This evidence supporting the Commission’s Order implementing individual wholesale rates was not contradicted by any of the parties during the compliance filing litigation regarding Providence’s Revised COSS. Not a single witness testified that the Commission should overturn its Order and return to a single wholesale rate, and none of the witnesses provided any testimony or evidence supporting a return to a uniform wholesale rate. Yet, during closing arguments, counsel for Providence, the Division, and Greenville/Lincoln suggested that the Commission should consider returning to a single wholesale rate. These suggestions by counsel were made without any evidentiary basis whatsoever.

Counsel for Greenville/Lincoln went so far as to suggest that the Commission should revisit the issue of individual wholesale rates because Greenville and Lincoln did not participate in the original litigation of this Docket:

“Now, Greenville and Lincoln have long been wholesale customers of Providence Water, but until this proceeding have not participated in the Public Utilities Commission's consideration of the setting of rates, and there's a reason for that. It's not -- not nothing to participate in one of these proceedings. It's a conscious decision to incur the time, energy and costs associated with evaluating all of the various pieces of data, assessing legal precedence, reviewing history in order to come to a position and articulate it. So as has historically been the case, Greenville and Lincoln have seen what Providence Water has proposed and they have decided that their interests are adequately represented, that what Providence has proposed historically, including in the initial filing in Docket 4994 in this case, was satisfactory to them, that it would be fair and reasonable and that although they could undertake the time, energy and effort to review and evaluate and perhaps find pieces of the rate model to poke at, that it was not worth it to do so. (Compliance Filing Transcript, February 17, 2022, p. 72, l. 23 to p. 73, l. 24)

This is not a basis for overturning the Commission's Order in this Docket for *at least* five reasons.

First, as counsel for Greenville and Lincoln made clear, their non-participation in the original litigation was a “conscious decision.” It was not an accident. Greenville and Lincoln made a conscious decision that their interests were adequately represented by the other parties. Now, they are unsatisfied with the outcome, so they changed their minds about the adequacy of that representation. This buyer's remorse is not a basis for overturning the Commission's Order.

Second, there are a number of ways for a wholesale customer to participate in a Docket without retaining experts or submitting testimony. A wholesale customer can be added to the service list to monitor filings and positions taken by the parties in a Docket without filing a motion to intervene; it can provide public comment; and, it can file a

formal protest pursuant to Rule 1.15 of the Commission's Rules of Practice and Procedure. In addition, a wholesale customer can file a motion for late intervention if an issue arises during the course of a docket. Even then, an intervening party is not required to submit testimony, it can file a Position Memorandum pursuant to Rule 1.14 of the Commission's Rules of Practice and Procedure. This memorandum can set forth a party's objection to any portion of a rate filing. Greenville and Lincoln failed to take any of these steps.

Third, the Rhode Island Supreme Court has made clear that a wholesale customer should choose one of these methods of participating in a Commission Docket to protect its interests. *Town of Narragansett v. Malachowski*, 621 A.2d 190 (1993) Participation by a wholesale customer is critical because as the Supreme Court stated: "It has been recognized by this court that the commission's power extends to devising a rate scheme that may vary from that proposed by the utility company. It is self-evident then that the substitution of rates before the commission issues a final order is an essential and regular aspect of the rate-making process." *Id.* at 197. The Commission is "free to accept or reject either party's proposal and allocate the costs so as to achieve a nondiscriminatory result," and has the right to reallocate costs differently than proposed by the utility. *Id.* at 196.

In *Malachowski*, the Wakefield Water Company submitted a filing in which it proposed a wholesale rate of \$0.54/thousand gallons. The Town of Narragansett did not participate in the PUC Docket. Prior to hearing, the Division and Wakefield Water Company reached a settlement that included a wholesale rate of \$0.66/thousand

gallons. The Town of Narragansett objected because the rate agreed to was higher than the rate initially proposed. The Supreme Court found that Narragansett should have intervened to protect its interests in the wholesale rate proposed in the original filing. *Id.* at 195 The Supreme Court declared that intervention and participation were especially important because the Commission has the right to reallocate costs differently than proposed by a utility to achieve a nondiscriminatory result. *Id.* at 196. And because the Commission is free to accept or reject a utility's proposed rate allocation, "no party has the right to assume that a rate-increase filing will not be subject to changes prior to implementation." *Id.* Therefore, the only way for a wholesale customer to protect its interest is through active participation in a Docket. To find otherwise would set a dangerous precedent. The Commission should not allow wholesale customers to make a "conscious decision" to not participate in a Docket and then ask to overturn the decision reached in that Docket in a later proceeding.

Fourth, Greenville and Lincoln presuppose that their participation would have caused the Commission to reach a different decision on individual wholesale rates. This ignores the fact that four parties in the original litigation – Providence, the Division, Kent County and the City of Warwick – entered into a Settlement Agreement that provided for a single wholesale rate. It is almost a certainty that Greenville and Lincoln would have signed on to this Settlement Agreement. The BCWA was the only party to oppose the Settlement Agreement, and the BCWA was met with staunch opposition from every other party. It is hard to imagine how this would have changed with the participation of Greenville and Lincoln.

Fifth, if Greenville and Lincoln were truly aggrieved by the Commission's Order implementing individual wholesale rates, they could have filed an appeal. Pursuant to R.I.G.L. § 39-5-1, "any person aggrieved by a decision or order of the commission" may file and appeal to the Rhode Island Supreme Court. The Court's decision in City of East Providence v. Public Utilities Commission, 566 A.2d 1305 (RI 1989) suggests that a party need not intervene in a Commission Docket to qualify as an aggrieved person as long as it can demonstrate an "adverse effect upon its property, income or indeed even its investment potential." A Supreme Court appeal is the proper way to challenge a Commission Order, it is not by seeking to reverse it in a later proceeding.

### **III. CONCLUSION**

WHEREFORE, the Bristol County Water Authority hereby prays that the Rhode Island Public Utilities Commission implement the individual wholesale rates it proposed in the schedules attached to its surrebuttal testimony.

The Bristol County Water Authority,  
By Its Attorney,



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**CERTIFICATION**

I hereby certify that on March 7, 2022, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and first class mail.

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