

STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD:

DOCKET NO. 4994

THE BRISTOL COUNTY WATER AUTHORITY'S REPLY TO THE SMITHFIELD WATER
SUPPLY BOARD'S POST-HEARING MEMORANDUM

I. INTRODUCTION

During closing arguments before the Rhode Island Public Utilities Commission ("Commission"), Marisa Desautel, the Attorney for the Smithfield Water Supply Board ("Smithfield") stated:

"As Smithfield has pointed out through the course of these proceedings, its concern is really limited to the inch-mile analysis used in the cost of service study. Specifically, as I've said before, the inch-mile analysis fails to allocate any mains to fire service demands. This failure is important because it results in an increase of the cost of mains allocated to other classes of customer. Additionally, the cost of service study uses an insufficient and inadequate fire demand in terms of gallons per minute for a system the size of Providence. This is not a reasonable method because sufficient cost allocation for fire service is necessary to prevent shifting those costs to the other classes of customer, including the wholesale class. As a result, Smithfield respectfully requests that the Commission inquire of and provide for a more appropriate fire demand in this case. Smithfield's expert, Mr. Guastella's opinions and conclusions have not been refuted by Providence other than a blanket statement made by Providence earlier today. This belies the testimony and evidence and does not carry Providence's burden of proof." (Compliance Filing Transcript, February 17, 2022, p. 90, l. 1 to p. 91, l. 5)

Thus, and consistent with its pre-filed testimony in this Docket, it seemed Smithfield would only challenge the allocation of costs to fire service. Although, in fairness, Smithfield did say it would file a "post-hearing brief to address this and other issues." (Compliance Filing Transcript, February 17, 2022, p. 91, ll. 6-7) The Bristol County Water Authority ("BCWA") wrongly assumed these "other issues" were those

raised in Smithfield's pre-filed testimony, such as Smithfield's exploration of alternative water sources.

The BCWA did not imagine Smithfield would seek to overturn the Commission's original Order in this Docket implementing individual wholesale rates by alleging that the BCWA's attorney made false statements and the BCWA's witness misled the Commission. Since these untrue and scurrilous claims were not made during the hearing when BCWA's counsel and witness could have responded, undersigned counsel takes this opportunity to answer these accusations.

II. ARGUMENT

1. Michael Maker Did Not Mislead The Commission

Attorney Desautel claims that Mr. Maker misled "the Commission with respect to references in the AWWA M1 water rate manual by a disturbingly deceptive omission of relevant sections that are directly applicable to the allocation of costs to wholesale customers as a class." (Smithfield Post-Hearing Memorandum, p.11) This is a very serious charge to level at a witness who testified under oath. Thus, it would seem an attorney making this accusation would have a strong evidentiary basis. Attorney Desautel does not. In fact, her "highlighting" of "omitted" language in the M1 Manual bolsters Mr. Maker's testimony.

To begin with, Mr. Maker did not attempt to hide anything from the Commission in his testimony. Mr. Maker properly cited the M1 Manual section he quoted, and his use of ellipses made clear it was not a full quote. Thus, anyone seeking to review the full quote would know its source and be able to consult the M1 Manual.

Rather, it is Attorney Desautel who misrepresents, or perhaps misunderstands, the meaning of the full M1 Manual passage she cited. The language she highlighted was not disturbingly or deceptively omitted. On the contrary, it strengthens Mr. Maker's point:

"Outside-Customer Retail and Wholesale Classifications

Fundamentally, the structuring of customer classes for outside service is a reflection of several rate-making decisions. In the event that a utility elects (or is required) to address outside retail or wholesale customer services separately to either recognize cost-of-service differentials or advance public policies (or both), separate rate classifications are likely required. Similarly, **policy objectives or differences in service characteristics** across outside customer groups **may necessitate further disaggregation** of the outside-customer retail rate classes (outside residential, commercial, etc.), **but also across multiple wholesale customers (e.g., wholesale customer A, wholesale customer B).**" (M1 Manual, p. 286)

To break this down, M1 first suggests that different customer classes may have to be created for outside retail and wholesale customers. Then, because of policy objectives or different service characteristics, these classes may have to be further disaggregated. Merriam-Webster defines disaggregation as "to separate into component parts" or "to break up or apart." Thus, M1 is stating that different wholesale customers within the wholesale class ("e.g., wholesale customer A, wholesale customer B", etc.) may have to be separated or broken apart rather than being treated as part of a single class.

What is even more remarkable is that Attorney Desautel herself did not provide a full quotation of Mr. Maker's testimony, so the BCWA provides that here with the missing testimony in bold:

“Q. Is calculating different rates for Providence’s different wholesale customers consistent with generally accepted ratemaking principles?”

A. Yes, setting different rates for different wholesale customers based on their individual and unique service characteristics is consistent with the AWWA’s Manual M-1, *Principles of Water Rates, Fees, and Charges* (7th Edition), which states, in part, that “policy objectives or differences in service characteristics...may necessitate further disaggregation...across multiple wholesale customers (e.g., wholesale customer A, wholesale customer B)”. (See Chapter VI.1 (*Overview of Outside Customer Rates*))

Furthermore, in Docket 4618, Mr. Smith and Providence recognized that the standard base/extra capacity approach allocates certain costs to the wholesale customers based on their peaking characteristics.

“It is important to note that the use of the standard approach would dictate the need for separate and different rates for each wholesale customer since it is likely the peaking characteristics of each individual wholesale customer are different than the peaking characteristics of the class as a whole.” (See Exhibit 4, Docket 4618, Providence Response to Division 4-5)” (Maker Direct Testimony, p. 9, ll. 1-9)

Thus, as Mr. Maker pointed out in his testimony, and as Attorney Desautel could plainly see, it was not just Mr. Maker who recognized individual wholesale rates are appropriate under the M1 Base Extra Capacity Method, Harold Smith did as well. And clearly Mr. Smith was not trying to mislead the Commission. The fact that Mr. Smith stated that the standard Base Extra Capacity Method would necessitate individual wholesale rates completely contradicts Attorney Desautel’s allegation that “Mr. Smith and Mr. Mierzwa were correct with respect to the Base-Extra Capacity method of allocating costs to customer classes, not individual customers, consistent with the forty-eight other water utility experts who prepared or contributed to the seventh edition of the AWWA M1 water rate manual, *Principles of Water Rates, Fees, and Charges*.”¹

¹ It should also be noted that Mr. Mierzwa ***never*** testified that individual wholesale rates were inconsistent with the M1 Manual. In fact, Mr. Mierzwa never filed any surrebuttal

It would appear that Attorney Desautel did not study the history of Providence's cost-of-service study and the issue of wholesale rates, which was reviewed extensively in the original litigation of this Docket. Beginning in 2007, Harold Smith acknowledged in his Docket 3832 testimony that:

"The disparity between the increases to wholesale rates and retail rates is most likely due to the fact that the wholesale rate increases that were agreed to by the parties to Providence Water's recent abbreviated filings **were not based on a complete cost-of-service study and did not reflect the true cost associated with providing wholesale service.**" (See Docket 4994 Hearing Transcript, July 15, 2020, p. 113, ll. 10-20)

In Providence's Docket 4618 (filed in 2016), the calculation of wholesale rates was addressed again. In fact, Harold Smith himself raised the issue in his direct testimony:

"Q. Why do you characterize the allocation approach as a modified base/extra capacity approach?"

A. I make this distinction because the approach used in this and previous filings utilizes a wholesale cost of service category to which costs associated with providing service to wholesale customers are allocated. This approach is different from a standard base/extra capacity approach in that it does not take into account the way in which the wholesale class demands service, but instead bases the allocation of costs to the wholesale customers on their proportionate share of total consumption." (See Docket 4994 Hearing Transcript, July 15, 2020, p. 114, l. 22 – p. 115, l. 20)

In follow up to this testimony, Mr. Smith answered the following data request from the Division:

"DIV. 4-5 c. Please explain how the results of the PWSB's cost of service study would differ if the standard extra/base capacity approach was utilized.

Response: Without performing the cost of service analysis using the "standard base/extra capacity approach" it is not possible to determine with any degree of

testimony in the original litigation of this Docket after the BCWA requested individual wholesale rates in its direct testimony.

specificity how the analysis would differ. However, the major difference would be that the analysis using the standard approach would allocate costs to the wholesale customers based on their peaking characteristics. **It is important to note that use of the standard approach would dictate the need for separate and different rates for each wholesale customer since it is likely the peaking characteristics of each individual wholesale customer are different than the peaking characteristics of the class as a whole.**" (See Docket 4994 Hearing Transcript, July 15, 2020, p. 115, l. 21 – p. 117, l. 8, emphasis added)

At the conclusion of Docket 4618, the Commission ordered Providence to submit "a new cost-of-service study, created anew, and without reference to previously used Commission allocators." (Docket 4618 Order, p. 36) Yet, when Providence submitted its original cost-of-service study in this Docket, it proposed a single wholesale rate "to be consistent with prior rate filings and Commission approvals." (Docket 4994 Order No. 23928, p. 28) The Commission found that Providence's proposal "was not consistent with the Commission's directive" in its Docket 4618 Order that Providence submit a new cost-of-service study "without reference to previously approved Commission allocators." (Id.)

The Commission's Order in Docket 4994 implementing individual wholesale rates was not based solely on a handful of lines in Mr. Maker's testimony, but on the overwhelming evidence that a single wholesale rate was unjust and unreasonable. In fact, as the Commission noted, and as referenced above, Mr. Smith acknowledged that Mr. Maker's proposal for individual wholesale rates "had merit." (Docket 4994 Order No. 23928, p. 31) And at the recent compliance filing hearing, Mr. Smith revisited one of the reasons for implementing individual wholesale rates:

"MR. NAULT: Okay. And if we're doing a study using a hydraulic model like we are here for the wholesale class, it's not unexpected that the outcomes of the

cost of service study would dictate a different rate change for each customer, correct?

MR. SMITH: Well, yeah. I mean, what this illustrates is, as I think the Chair -- that there have been subsidies -- some wholesale customers have been subsidizing other wholesale customers over the course of the past few decades that there was a uniform rate in effect, and to correct that disparity, you're going to have to change the -- the change in rates is going to -- correct that -- subsidy, there's going to be a greater disparity in the adjustments required to get them to a cost of service rate." (Compliance Filing Transcript, February 15, 2022, p. 274, l. 11 to p. 275, l. 5)

Thus, it is not surprising Smithfield would like these subsidies to continue under a uniform wholesale rate.

Despite Attorney Desautel's contention, the implementation of individual wholesale rates has not been "rebutted" or "completely undermined." Furthermore, the Commission was not somehow duped by Mr. Maker's testimony. There was extensive litigation over the implementation of individual wholesale rates when Providence made its original filing in this Docket. And there was extensive evidence entered into the record through pre-filed testimony, data request responses, and live hearing testimony. It is this full body of evidence the Commission used in issuing its Order, which was supported by the applicable law and facts, regarding individual wholesale rates.

In fact, Smithfield's own witness did not testify in his direct or surrebuttal testimony that individual wholesale rates violated the principles in the M1 Manual, nor did he suggest that the Commission overturn its Docket 4994 Order and return to a single wholesale rate. Had he provided such testimony, the BCWA would have issued data requests and addressed this issue extensively during the litigation of this compliance filing. Smithfield did not provide any such testimony. Rather, Attorney Desautel raises the issue in a post-hearing memorandum and does so by accusing Mr. Maker of

misleading the Commission. It should not escape the Commission's attention that Attorney Desautel *never* confronted Mr. Maker with these allegations on cross-examination. (Compliance Filing Transcript, February 16, 2022, pp. 14-26) Thus, she did not provide him with an opportunity to rebut her allegations. These unfounded accusations should not serve as a basis for overturning a Commission Order.²

2. BCWA's Counsel Did Not Make False Statements Before The Commission

Undersigned counsel has been a practicing attorney in good standing for thirty years and has practiced before the Commission for over twenty-five years. Counsel is well aware of his obligation for candor before a tribunal. Despite Attorney Desautel's assertion, undersigned counsel did not make a "false assertion" in his closing statement that the M1 Manual supports the implementation of individual wholesale rates or that "the implementation of individual wholesale rates was entirely supported by the evidence" in the original litigation of this Docket. (Compliance Filing Transcript, February 17, 2022, p. 53) As set forth above, it was not just Mr. Maker who testified that individual wholesale rates are appropriate under the M1 Base Extra Capacity Method, but Mr. Smith as well.

Further, undersigned counsel did not try to "support the use of individual wholesale rates with his own opinion, absent any evidence in the record, that a past decision in an old Newport Water rate case is applicable to the circumstances in this case." (Smithfield Post-Hearing Memorandum, p. 13) What undersigned counsel said was:

² The BCWA incorporates by reference pages 7-12 of its Post-Hearing Memorandum regarding non-participation in a prior Commission Docket, and applies the same analysis to Smithfield.

“...the Commission can take note of this or judicial notice of this, individual wholesale rates are applied to other regulated utilities in the State of Rhode Island, in particular, Newport Water, using the base-extra capacity method.” (Compliance Filing Transcript, February 17, 2022, p. 53, ll. 19-24)

This is not an opinion. It is a fact. The Commission *has* approved individual wholesale rates for Newport Water’s two individual wholesale customers over the course of many years and multiple dockets, not just in “some old Newport Water rate case.” This fact was raised in the original litigation of this Docket and the compliance filing litigation, and it is not disputed because it’s true. The “evidence” for this fact are the numerous Orders issued by this Commission in Newport Water’s rate filings for over twenty years. And as undersigned counsel stated, the Commission can take judicial notice of these Orders and this fact. This judicial notice serves as competent evidence under the Rhode Island Rules of Evidence and the Commission’s Rules of Practice and Procedure.

Finally, it should once again not escape notice that the allegations regarding BCWA’s counsel were not made during the hearing when he could have responded. Parties in litigation before the Commission can differ, but accusations that a witness “misled” the Commission or that counsel made a “false assertion” to the Commission should be raised directly to the witness and counsel, not through a post-hearing pleading.

The Bristol County Water Authority,
By Its Attorney,



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CERTIFICATION

I hereby certify that on March 18, 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 hand delivery.

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