



PROVIDENCE WATER

Tap Water Delivers

August 7, 2020

**The Hon. Jorge O. Elorza**  
Mayor

**Ricky Caruolo**  
General Manager

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

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Legal Advisor

RE: Dk 4994; Public Utilities Commission; Post Hearing Set 2

Dear Mrs. Massaro:

Attached please find an original and nine copies of Providence Water's responses to the second set of post hearing data requests from the Commission.

If you have any questions, I can be reached extension 7238.

Sincerely,

Nancy E. Parrillo  
Senior Manager-Finance

cc: service list(via email)

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**MEMBER**

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Providence Water Docket 4994

**Public Utilities Commission  
Post Hearing Set 2 Data Request  
August 3, 2020**

**COMM:** 1. Referring to Providence Water's brief at page 11, please provide an estimate of the cost of performing the referenced study for which Providence Water is maintaining it needs funding.

**RESPONSE:**

Providence Water estimates that the study will cost \$110,000.

STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD : DOCKET No. 4994

**PROVIDENCE WATER SUPPLY BOARD'S RESPONSES TO  
COMMISSION'S 2<sup>ND</sup> SET OF POST-HEARING DATA REQUESTS**

- 2-2 Referring to Providence Water's brief (item 3) which maintains that "Warwick could be highly incentivized to purchase its water from KCWA instead of buying its water from Providence Water," and compare that conclusion to the actual wording of the agreement between KCWA and the City of Warwick which states: "City agrees to pay to KCWA the same rate for water it uses as the City pays to the Providence Water Supply Board for said water." Please also see page 3 of the brief filed by Bristol on July 24, which cites the language of the agreement and argues that Warwick would not pay a rate to KCWA that was different than the rate Warwick pays Providence Water.
- a) Has PWC inadvertently misread the terms of the agreement between Warwick and KCWA?
  - b) If not, please explain why Warwick would be incentivized to buy more from KCWA if Warwick will pay KCWA "the same rate for water it uses as [Warwick] pays to the Providence Water Supply Board."

RESPONSE:

Providence Water wants to emphasize to the Commission that it does not oppose establishing individual wholesale rates in the future if, after a study of all the pros, cons and complexities of individual wholesale rates that includes input from all stakeholders, it is determined that just and reasonable individual wholesale rates can and should be used, and the Commission agrees. See Providence Water's response to PUC data request 2-1 (attached).

The KCWA/Warwick issue is a difficult issue that Providence Water believes needs to be studied in regard to the possibility of establishing just and reasonable individual wholesale rates. Providence Water does not believe that it has misread the KCWA/Warwick contracts, although Providence Water agrees that there is ambiguity in both the contracts and the KCWA wholesale rate tariff.

Providence Water believes that the KCWA wholesale tariff for sales to Warwick controls, not the contracts. Rates established by the Commission have the force and effect of a statute. *Narragansett Electric Co. v. Burke*, 404 A.2d 821 (RI 1979), cert. denied, 444 U.S. 1079 (1980). KCWA's Commission-approved wholesale rate for the water KCWA sells to Warwick is set forth in its rates and tariffs as follows:

## OTHER CHARGES

**WHOLESALE RATE WARWICK WATER DEPARTMENT:** Same rate as charged by Providence Water Supply Board. Rate will change upon changes to Providence Water Supply Board wholesale rate charge.

Because this is KCWA's tariff, we read the tariff reference to "same rate as charged by Providence Water Supply Board" to mean the rate charged to KCWA by Providence Water. But we concede it is not 100% clear.

Contracts between KCWA and Warwick cannot override KCWA's Commission approved wholesale rate tariff. Therefore, we read this tariff as requiring KCWA to charge the same rate for water sold to Warwick as Providence Water charges to KCWA. We believe this makes sense because if Warwick's charged rate from KCWA is higher than KCWA's charged rate from Providence Water, then KCWA would make a profit on each gallon of water sold to Warwick (assuming that Warwick's individual wholesale rate turns out to be higher than the KCWA's individual wholesale rate, as was suggested by BCWA's expert witness, Mr. Maker).

BCWA has also conceded that its reading of the situation "would arguably result in a "profit." (Brief, at 4).

We are unaware of any Commission ruling that contemplates that KCWA could or should make a profit on its wholesale water sales to Warwick. We believe that it would not be just and reasonable to Providence Water and its ratepayers for KCWA to profit in this way from Providence Water's efforts to produce safe and potable drinking water. After all, Providence Water, KCWA, and Warwick are all non-profit entities.

BCWA concedes in its brief that the KCWA wholesale tariff is "not quite as clear as the contract language." (page 3). However, the wholesale tariff must override the contracts because a contract cannot vary a Commission-approved tariff.

Moreover, although Providence Water agrees with BCWA that the two wholesale contracts between KCWA and Warwick could be read in such a way that the rates charged to each other would not be the same in the event of the establishment of individual wholesale rates by the Commission, it does not appear that such a reading of these contracts would be in accordance with the intent of the parties in executing the contracts.

As KCWA's expert witness, David Bebyn, stated on page 7 of his prefiled direct testimony in this docket:

"Q. If individual rates for each wholesale customer could solve this issue, what impact would it have on KCWA?

A. That solution would be a problem for KCWA since KCWA and Warwick have agreements in place for wheeling water between the two

systems. **The agreement sets the charge between each other at the current Providence Water rate.** This would cause funding issues if each had different rates between what they were wheeling and receiving. (Emphasis added).

When BCWA issued data request 2-1 to KCWA to explain this testimony, KCWA reaffirmed that it was the intention of these agreements to make sure that both Warwick and KCWA would be providing water to each other “at the same wholesale rate” so that the wholesale cost was “uniform between the systems.”

The BCWA 2-1 data request and the KCWA response state in pertinent part:

“Q. On page 7 of his testimony, Mr. Bebyn states that individual rates for each of the wholesale customers ‘would be a problem for KCWA since KCWA and Warwick have agreements in place for wheeling water between the two systems. The agreement sets the charge between the other at the current Providence Water rate. This would cause funding issues if each had different rates between what they were wheeling and receiving.’

\* \* \*

A. There are two wholesale agreements in place between KCWA and the City of Warwick. The first agreement is from Warwick to KCWA \* \* \* The second agreement is from KCWA to Warwick to provide water to Potowomut **at the same wholesale rate** in consideration what has been deemed fair and reasonable between the contracting parties. **Both agreements contain similar language concerning the basis of the wholesale cost being uniform between the systems.**

\* \* \*

Unequal rates would potentially harm and act to void the spirit of the agreements.”

BCWA’s interpretation of these agreements conflicts with what KCWA has explained was the intention of the parties, as set forth in the testimony and data response of KCWA. It was the intention of KCWA and Warwick that “the charge between each other” would be “at the current Providence Water rate” and that is why “both agreements contain similar language concerning the basis of the wholesale cost being uniform between the systems.”

Also, the KCWA/Warwick contracts may not be in force and effect at this time.

Both contracts were signed in 2006 and were apparently intended to be in effect for 10 years, through 2016. Both contracts state “the parties agree that they will review this agreement at each and every ten (10) year interval in order to address changing conditions.”

Yet there is no evidence that such a review ever occurred or that either contract has been renewed or extended past 2016. Finally, both contracts say that “In the event of any inconsistency between any term or provision of the Agreement . . . laws and ordinances shall prevail . . .” The KCWA wholesale tariff has the force and effect of law and it must therefore prevail, even assuming that the contracts are still in effect.

Prepared by: Michael R. McElroy, Providence Water Legal Counsel

# Providence Water Docket 4994

## Public Utilities Commission Data Request – Set 2 June 26, 2020

### PUC 2-1

Assume that the PUC decided to implement individual rates for wholesale customers in this docket: Please provide what Providence Water believes would be the appropriate rate for each wholesale customer for each of the rate years. Please explain your position and methodology and how it is supported by generally accepted ratemaking principles.

### RESPONSE:

Providence Water is unable to calculate individual wholesale rates which are just and reasonable because it does not have sufficient information at this time to reflect all of nuances involved in serving each wholesale customer individually. As requested by the Commission in Docket 4618, Providence Water completed and submitted a “new cost of service study conducted without reference to previously used Commission adjusted allocators.” This new study, as presented in Harold Smith’s direct and rebuttal testimonies, utilized Providence Water’s existing customer classes (residential, commercial, industrial and wholesale) because the combined wholesale rate was not a disputed issue in that Docket.

Providence Water believes that the rates proposed in Harold Smith’s rebuttal testimony are just and reasonable with respect to serving the wholesale customers as a combined group. That said, it is possible to sub-divide customer classes into smaller groups in order to recognize differences in cost of service.

Providence Water believes that, if properly studied and calculated, individual wholesale rates could be developed that are just and reasonable. Accordingly, and as noted in Providence Water’s response to DIV 4-5 and in Harold Smith’s rebuttal testimony, Providence Water is willing to thoroughly study the issue and—after ensuring that all of the operational, engineering, contractual and financial issues are examined in detail with input from all stakeholders—implement individual wholesale rates if ordered to do so by the Commission.

That said, doing so in this Docket would not result in just and reasonable rates because Providence Water does not have sufficient information available right now. Mr. Maker’s limited approach, which focuses on differences in peak demand and flushing and pumping, would not result in just and reasonable rates because there are a number of other operational, financial, engineering, and contractual issues which have not yet been studied. These include, but are not limited to the following:

1. **The impact of the peak demand on Providence Water’s costs may not be the same by individual wholesale customer.** In some cases peak demand may have little to no impact on Providence Water’s costs. In fact it may represent a beneficial impact on Providence Water’s operations to the extent that it improves water quality in certain portions of Providence Water’s system. This nuance

## Providence Water Docket 4994

### Public Utilities Commission Data Request – Set 2 June 26, 2020

would not be captured by merely including individual peaking factors into the cost of service study because the impact may not be the same for each customer.

2. **The different assets used to serve each individual wholesale customer.** This includes a distinction between high service (requires pumping) and low service (gravity-fed) areas, but is not limited to this issue. Providence Water would need to evaluate the individual reservoirs, pump stations and transmissions mains to ensure that the cost allocations reflect the unique use of these assets by each individual wholesale customer. In other words, the traditional base-extra capacity approach may need to be modified under an individual wholesale rate determination.
3. **The uncertain revenue impact to Providence Water related to the arrangements between Kent County and Warwick.** If Warwick's rates significantly increase, as proposed by Mr. Maker, and if Kent County Water Authority's rates decrease, as proposed by Mr. Maker, Warwick will be incentivized to purchase more water from Kent County, as opposed to Providence Water. While this may mean increased purchases by Kent County, these would be at a lower rate, resulting in overall revenue for Providence Water which is a lower than approved and putting Providence Water in a difficult financial situation. It is also possible that increased purchases by Warwick from Kent County could drive Kent County's peak demand higher, and Warwick's demand lower. In other words, operational changes made by these two customers after such rates are implemented could result in a use of Providence Water's system that is significantly different than what was assumed when the individual wholesale rates were developed.
4. **Contractual issues resulting from the wheeling arrangement between Kent County and Warwick.** As noted in Mr. Bebyn's rebuttal testimony, the current arrangement is based on Providence Water's uniform wholesale rate. Individual rates may present contractual issues that will need to be evaluated by the two parties.

While some of these issues are related to cost of service, others present contractual, engineering, operational and financial challenges which will take time to properly evaluate. This is especially evident in Kent County's response to BCWA's proposal. Despite the fact that Kent County would pay a lower rate under BCWA's proposal, Kent County has *opposed* the individual wholesale rates developed by Mr. Maker of BCWA, citing concerns regarding potential contractual issues with the City of Warwick. Providence Water believes these issues could be resolved should the Commission direct Providence Water to study and develop individual wholesale rates, but this resolution will take funding, time, information and study in order to come to a just and reasonable result.