

**STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS
WARWICK, RHODE ISLAND 02888**

IN RE: KENT COUNTY WATER AUTHORITY'S)
 APPLICATION FOR BORROWING) **Docket No. D-22-03**
 AUTHORITY)

Application Filed: February 24, 2022

Hearing Date: March 21, 2022

REPORT AND ORDER

On February 24, 2022, the Kent County Water Authority (“KCWA” or “Authority”) filed an application with the Division of Public Utilities and Carriers (“Division”) for Borrowing Authority pursuant to R.I. Gen. Laws § 39-3-15, § 39-3-17, § 39-3-18 and Rule 1.14 of the Division’s Rules of Practice and Procedure (815-RICR-00-00-1). In accordance with the application, KCWA requests authority to borrow a principal amount not to exceed \$20,000,000.¹

The Division conducted a duly noticed hearing on March 21, 2022. The following counsel entered their appearances on the Record:

For KCWA: Mary B. Shekarchi, Esq.

**For the
Advocacy Section: Gregory Schultz, Spec. Assist. Attorney General**

¹ The proposed borrowing consists of two components: (i) \$18,173,087 from the Rhode Island Infrastructure Bank (“RIIB”) Safe Drinking Water State Revolving Fund (“SDWSRF”) and (ii) \$1,826,913 from the RIIB Efficient Buildings Fund (“EBF”). *KCWA Exhibit A(1) at 9.*

KCWA's Direct Case

In support of its application, KCWA presented three witnesses: David L. Simmons P.E., Executive Director/Chief for the Authority; Maureen E. Gurghigian, Managing Director at Hilltop Securities; and David G. Bebyn, CPA, President of B&E Consulting LLC.

Mr. Simmons testified that KCWA currently performs administrative and operational activities at 1072 Main Street, West Warwick, Rhode Island. Constructed in the early 1900s, the facility was transferred to KCWA more than 60 years ago.² While the Authority renovated the facility in the 1970s, KCWA has only performed additional limited renovations over the years due to the facility's non-conforming dimensions.³ Other deficiencies include limited parking, a break/lunchroom that is also used for storing oil and/or hazardous materials, an inappropriate number of employee toilet facilities under Occupational Safety and Health Administrative general industry standards, and insufficient storage space for Authority records.⁴

KCWA has performed two studies to assess the adequacy of the existing facility and the feasibility of building a new facility. As early as 1999, Camp Dresser & McKee ("CDM") concluded that the Authority's existing facility is

² *KCWA Exhibit A(1) at 3.*

³ *Id.*

⁴ *Id.*

antiquated, too small to satisfy the Authority's needs, and is rife with building and fire code violations.⁵

The 1999 CDM study was followed by the utility's 2016 five-year capital improvement plan prepared by C&E Engineering Partners ("C&E"). C&E concluded that the existing facility has exceeded its original life expectancy. C&E also had numerous concerns related to building and fire code violations, the presence of lead paint and asbestos on the premises, structural deficiencies, inadequate yard space and parking, and security issues.⁶

In 2020, the Authority engaged Vision 3 Architects and Pare Engineering ("Vision 3/Pare") to update the 1999 study ("2020 Study"). Like the earlier 1999 CDM study, the 2020 Study concluded that the Authority's existing facility "far exceeded [its] useful li[fe] and is no longer adequate to support the future increase in capital equipment acquisitions, warehousing, and administrative responsibilities of the KCWA."⁷

According to Mr. Simmons, the 2020 Study recommended three possible sites that could fulfill the Authority's facilities' requirements.⁸ Additionally, KCWA's Board performed further due diligence by issuing a Request for

⁵ New Office and Maintenance Facility Study, Cap Dresser & McKee 2-9 to 2-11 (1999).

⁶ Water Supply System Five Year Capital Improvement Program Update 2017-2022, C & E Engineering 2-7 (March 2016).

⁷ New Office and Maintenance Facilities 51 Technology Way – Due Diligence Study, Vision 3 Architects, Vol. 3, Page 3 (August 16, 2021).

⁸ KCWA Exhibit A(1) at 5.

Proposals (“RFP”).⁹ The RFP generated two additional properties for the Board’s consideration.¹⁰ Based on the 2020 Study, KCWA’s Board selected a 14.19 acre parcel located at the southeast corner of the intersection of Technology Way with Hopkins Hill Road in West Greenwich, Rhode Island. On September 30, 2021, the Authority acquired the Hopkins Hill property for \$900,000.¹¹

Mr. Simmons testified that KCWA has compared the requested \$20,000,000 debt obligation from RIIB to a publicly offered bond on the open market.¹² The former financing solution saves KCWA approximately \$500,000 over the 20-year term of the loan, and there may be additional savings through the EBF component of the proposed loan through energy efficient design components such as rooftop solar and electric vehicle charging stations.¹³

The Authority’s second witness, Maureen E. Gurghigian, explained the advantages of obtaining financing through RIIB. RIIB, she explained, makes loans from the SDWSRF at approximately 25% below market rates to water suppliers for qualifying projects and approximately 33% below market rates for energy projects from the EBF.¹⁴ As a result, based on market conditions as of March 11, 2022, the Authority anticipates interest on the combined loan will not

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id. at 6.*

¹² *Id. at 8.*

¹³ *Id. at 9.*

¹⁴ *KCWA Exhibit A(2) at 3.*

exceed 3.47% which would result in a projected subsidized rate of approximately 2.41%.¹⁵ For purposes of Division approval, the Authority is requesting “not to exceed” market and subsidized rates of 4.00% and 3.00%, respectively.¹⁶

KCWA’s third witness, David G. Bebyn, provided further details regarding the purposes of the requested loans, the loans’ financing impact on ratepayers, and the debt service covenants that would be imposed on the Authority under the proposed loans. According to Mr. Bebyn, the proceeds of the two loans will be applied approximately as follows:

Deposit in Construction Fund	\$ 18,394,079.95
Debt Service Reserve Fund	\$ 1,329,525.85
Loan Origination Fee	\$ 200,000.00
Cost of Issuance – Local Level	\$ 70,394.20 ¹⁷

According to Mr. Bebyn the drawdown period on the loans is 18 months, and the repayment periods on the RIIB SDWSRF and RIIB EBF loan components are 20 years and 15 years, respectively.¹⁸ For the first 15 years of the combined loan amount, the debt service is designed for level annual payments of no more than \$1,335,000 and no more than \$1,190,000 for the remaining 5 years, with no balloon payment due at the end of 20 years.¹⁹

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *KCWA Exhibit A(3) at 2.*

¹⁸ *Id. at 3.*

¹⁹ *Id.*

Mr. Bebyn explained that KCWA possesses sufficient rates in place to pay the debt service on the combined \$20,000,000 loan amount. According to Mr. Bebyn, KCWA and the Division reached a settlement agreement in Docket No. 5012 to transfer the debt service funding for the Authority's retired 2021 Series A bond to KCWA's restricted Capital Improvement Project ("CIP") Account.²⁰ The settlement further provided that the CIP Account could be used for pay-as-you-go capital projects or debt service payments related to funds borrowed for capital projects.²¹ Annual funding for the 2012 Series A bond was \$2,183,244. This amount is "more than sufficient" to cover the \$1,335,000 annual debt service payment on the proposed combined \$20,000,000 loan amount.²² Thus, Mr. Bebyn opined "[t]here will be no rate impact on ratepayers because current rates will cover the debt service cost."²³

Lastly, Mr. Bebyn discussed KCWA's ability to satisfy RIIB's debt service covenants. According to Mr. Bebyn, KCWA is required to maintain Debt Service Coverage ("DSC") of 1.35X for RIIB bonds based on debt service net of any interest subsidy.²⁴ Since the combined debt service payments on the proposed loans are amply covered, Mr. Bebyn opined KCWA "will be able to make this

²⁰ *Id.* See also *In Re: Kent County Water Authority Abbreviated Rate Filing*, Docket No. 5012, Order No. 23896 at 7-8 (September 1, 2020).

²¹ *KCWA Exhibit A(3) at 3.*

²² *Id.*

²³ *Id. at 4.*

²⁴ *Id. at 3.*

coverage allowance using the current rates, including the CIP Account funding...”²⁵

As part of its direct case, KCWA also introduced a capital structure presentation.²⁶ The presentation shows “Actual and Outstanding” and “*Pro Forma*” percentages for KCWA’s Debt/Total Assets and Debt/Total Net Utility Plant.²⁷ As of June 30, 2021, KCWA’s Debt/Total Assets and Debt/Total Net Utility Plant were both 0%.²⁸ On a *pro forma* basis, these percentages increased to 9.34% and 10.52%, respectively.²⁹ On inquiry from the Advocacy Section, Mr. Bebyn testified the *pro forma* percentages were still “reasonable.”

Advocacy Section’s Direct Case

After KCWA presented its case in chief, the Advocacy Section provided the Division with its recommendation regarding KCWA’s application. Based on its review, the Advocacy Section believed KCWA’s filing met all the requirements set forth in the Division’s Rules of Practice and Procedure; the amount, term and proceeds of the proposed loans were fully explained; and that KCWA possesses the necessary revenues to repay the requested loans. Accordingly, the Advocacy Section believed the loans were reasonable, in the best interest of ratepayers and should be approved by the Division.

²⁵ *Id.* at 4.

²⁶ *KCWA Exhibit C.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

Findings

After a careful examination of the Record, the Division finds that the purposes, terms and proposed amounts of the requested loans are reasonably required for the purposes set forth in the application and are in the best interest of ratepayers. The Authority's need for a new administration and operations facility is well-known and readily apparent from the testimony on the record. In the 2020 Study, Vision 3/Pare concluded the Authority's existing facilities "far exceed[] their useful lives and are no longer adequate to support the future increase in capital equipment acquisitions, warehousing, and administrative responsibilities of the KCWA."³⁰ This conclusion is supported by the 1999 CDM report which recognizes that the existing facility is grossly antiquated and inadequate to satisfy KCWA's current and future operation needs,³¹ as well as the Authority's 2017-2022 Five Year CIP Program in which C&E observes there is a major deficiency in office and field efficiency due to the dire need for facility replacement with respect to the existing facilities.³²

The projected interest rate on the proposed combined loan amount is also reasonable. As of March 11, 2022, it is anticipated interest on the combined loan will not exceed 3.47% which would result in a projected subsidized rate of

³⁰ New Office and Maintenance Facilities 51 Technology Way – Due Diligence Study, Vision 3 Architects, Vol. 3, Page 3 (August 16, 2021).

³¹ New Office and Maintenance Facility Study, Cap Dresser & McKee 2-9 to 2-11 (1999).

³² Water Supply System Five Year Capital Improvement Program Update 2017-2022, C & E Engineering 2-7 (March 2016).

approximately 2.41%.³³ Proceeding with the proposed loans through RIIB as compared to a publicly offered bond in the open market will save KCWA approximately \$500,000 over 20 years.³⁴ Additional savings may be generated by energy efficiency design components.³⁵

KCWA, moreover, possesses sufficient funds in current rates to pay the projected annual debt service on both loans. The annual funding from the 2012 Series A bond of \$2,183,244 (which the Division and KCWA agreed would be transferred to the restricted CIP Account in Docket No. 5012) is more than sufficient to cover the combined \$1,335,000 annual debt service payment on the proposed loans.³⁶ It is also more than sufficient for KCWA to maintain the required DSC of 1.35X for RIIB bonds.³⁷ Lastly, Mr. Bebyn characterized KCWA's *pro forma* Debt/Total Assets and Debt/Net Utility Plant percentages of 9.34% and 10.52%, respectively as "reasonable."

In addition to KCWA's evidentiary presentation, the Advocacy Section also performed a careful review of KCWA's filing. The Advocacy Section viewed the amount, term and proceeds of the requested combined loan amount as fully explained and documented and observed that KCWA possesses the necessary revenues to repay the requested combined loan amount. Based on its review,

³³ *KCWA Exhibit A(2) at 3.*

³⁴ *Simmons Direct Testimony at 8-9.*

³⁵ *Id. at 9.*

³⁶ *KCWA Exhibit A(3) at 3*

³⁷ *Id. at 4.*

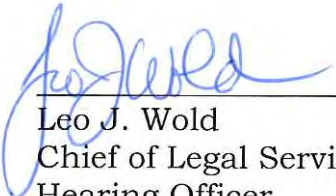
the Advocacy Section recommended that the Division approve KCWA's Application for Borrowing Authority.

Accordingly, after careful consideration of the Record, it is hereby,


(24331) ORDERED:

1. That KCWA'S Application for Borrowing Authority dated February 24, 2022 as amended at hearing is granted;
2. That the Division limits approval of KCWA's application to the purposes, amounts, character, and terms of the security issues identified in the Record; and
3. That the Division's approval of KCWA's application is subject to KCWA's use of the funding sources previously approved by the Public Utilities Commission to pay the requested combined loan amount, or if subsequently required, by additional funding sources approved by the Commission for such purpose.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, MARCH 24, 2022.



Leo J. Wold
Chief of Legal Services
Hearing Officer

APPROVED: 

Anthony Manni
Deputy Administrator³⁸

³⁸ Normally, the Administrator of the Division would approve and sign Orders such as this Order. In her absence, and pursuant to authority granted by R.I. Gen. Laws § 42-20-3 and § 42-20-5, Deputy Administrator Manni has been designated and authorized by the Administrator to approve and sign Orders such as this Order issued by the Division.



**STATE OF RHODE ISLAND
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**NOTICE OF AVAILABILITY OF JUDICIAL REVIEW
(PROVIDED PURSUANT TO R.I.G.L. § 42-35-12)**

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers (“Division”) you may seek judicial review of the Division’s final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division’s final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division’s final decision. You may, however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.