

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: City of Newport Water Division :
 Application to Incur Long-Term Debt : Docket No. D-05-07

REPORT AND ORDER

On February 15, 2005, the City of Newport, acting by and through the Newport Water Division ("Newport Water") filed an application with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking both retroactive and prospective authority to use ratepayer -- derived revenues to finance debt service associated with the issuance of \$12,395,000 in refunding bonds, which were issued by the City of Newport on October 7, 2004. The belated application was filed in response to a Division inquiry and pursuant to the requirements of Rhode Island General Laws, Section 39-3-15, et seq.¹

In response to the application filing, the Division conducted a duly noticed public hearing on March 9, 2005. The hearing was conducted in the Division's hearing room, located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances:

For Newport Water:	Joseph A. Keough, Jr., Esq.
For the Division's Advocacy Section:	Leo J. Wold, Esq. Special Assistant Attorney General

¹ The application has been entered on the record as Newport Water Exhibit 1.

Newport Water proffered one witness in support of its application. The witness was identified as Ms. Laura Sitrin, the Finance Director for the City of Newport. Ms. Sitrin submitted pre-filed direct testimony in this docket.

Ms. Sitrin testified that on October 7, 2004, the City of Newport issued \$12,395,000 of refunding bonds comprised of \$5,735,000 General Obligation Refunding Bonds, 2004 Series A Bonds (“Series A”) and \$6,660,000 General Obligation Refunding Bonds, 2004 Series B Bonds (“Series B”). She related that Series A and Series B Bonds refunded \$11,940,000 from eleven different series of Bonds. She explained that five of these series provided funds to the City of Newport’s Water Fund, namely:

- (1) *1989 Bonds – Water Treatment facility, which were refunded by Series A;*
- (2) *1990 Bonds – Water Treatment facility, which were refunded by Series A;*
- (3) *1990 Bonds - Sakonnet Pipeline, which were refunded by Series A;*
- (4) *1992 Bonds - Sakonnet Pipeline, which were refunded by Series B;*
- (5) *1994 Bonds - Sakonnet Pipeline, which were refunded by Series B.²*

Ms. Sitrin testified that the Water Fund’s share of the refunded bonds was \$6,375,000, and that the new principal for the Water Fund is \$7,202,901. The witness proffered a schedule that provides an analysis of the refunding.³

Ms. Sitrin explained that the principal amount of the refunding bonds is higher than the principal amount of refunded bonds “because in order to call or redeem bonds from investors, the City must pay not only the principal of the

² Newport Water Exhibit 1, Sitrin Testimony, p. 3.

³ *Id.*, Schedule LS-1.

prior bonds, but also accrued interest, any applicable redemption premium and costs of issuance”. She related that in this case the refunded bonds had redemption premiums ranging from 101.5 percent to 102 percent.⁴ Ms. Sitrin also noted that all refinancing and insurance costs were paid from the City’s General Fund, not the City’s Water Fund.⁵

Ms. Sitrin testified that the proceeds of the Refunding Bonds were paid to J.P. Morgan Trust Company, as Paying Agent for the Refunded Bonds. She stated that the proceeds were held in escrow and invested in government obligations and applied on November 15, 2004 to pay off the Refunded Bonds.

Ms. Sitrin also testified that the effective interest rate on the bonds is 2.616 percent, with bond coupon rates ranging from 2.0 percent to 4.0 percent. She provided two additional schedules to illustrate the “Consolidated Debt Service Requirements”, both before and after the refunding.⁶

Ms. Sitrin explained that as a result of the refunding, the Water Fund would save approximately \$353,150. She also noted that the debt service required for the new bonds is already included in Newport Water’s approved rates.

The Division’s Advocacy Section did not present any witnesses in this case. It did, however, proffer a compilation of data responses that were previously prepared by Newport Water in response written interrogatories propounded by the Advocacy Section during the discovery phase of this

⁴ Id.

⁵ Id.

⁶ Id., p. 4, and Schedules LS-2 and LS-3.

docket.⁷ The Advocacy Section subsequently stated for the record that it was satisfied from the evidence presented, that Newport Water had met the requisite burden of proof set forth in R.I.G.L. §39-3-15, et seq. and that the proposed borrowing was in the public interest.

Findings

The Division is mindful that the City of Newport and Newport Water believe that Division approval, under R.I.G.L. §39-3-15, is not required in instances where ratepayer-derived revenues are utilized to finance debt service associated with general obligation bonds. In her pre-filed testimony, Ms. Sitrin stated that she “believed that in this particular situation, Division approval was not a prerequisite to issuing the bonds”.⁸ The Division disagrees. The Division acknowledges that the City’s taxpayers alone are obligated to guarantee payment on these general obligation bonds in the event of default. The Division further acknowledges that the Public Utilities Commission has approved and included the relevant debt service allowance in Newport Water’s rates, due to the fact that a portion of the general obligation bond proceeds are being used to fund system improvements at Newport Water. However, the Division maintains that the provisions and mandates contained in R.I.G.L. Section 39-3-15 apply to Newport Water in these circumstances. In short, the Division finds that so long as Newport Water’s ratepayers are being required to

⁷ Advocacy Section Exhibit 1.

⁸ Id., p. 2.

pay a share of the City's bond-related debt service, the ratepayer protections afforded under R.I.G.L. Section 39-3-15 apply.⁹

Section 39-3-15 provides that:

A public utility ... may not, without application to and authority from the division, issue stocks, bonds, notes, or other evidences of indebtedness, payable more than twelve (12) months from the date of issue, when necessary for the ... improvement of its facilities or for the improvement or maintenance of its services...

The Division finds that Newport Water's (and the ratepayer's) debt service burden relative to the City's general obligation bonds represent "other evidences of indebtedness" within the context of Section 39-3-15. Accordingly, the City of Newport and Newport Water shall be placed on notice that the Division expects timely Section 39-3-15 petition filings from Newport Water each time the City of Newport issues general obligation bonds that will be used to fund Newport Water projects and be financed, fully or partially, through Newport Water's rates.

Regarding the recent bond issues, the Division has carefully reviewed the City of Newport's 2004 Series A and Series B bond issues and Newport Water's related debt service obligations. The Division finds the amount, character and terms of the 2004 bond issues and the purposes for which the bonds were issued to be reasonable and in the best interests of Newport Water's ratepayers. Accordingly, the Division will sanction and approve Newport

⁹ The Division has made similar finding with respect to the City of Woonsocket and the Woonsocket Water Department. See Docket No. D-00-9 and Order No.16222, issued on April 3, 2000.

Water's 2004 debt service obligations under the City of Newport's 2004 Refunding Bonds.

Now accordingly, it is

(18172) ORDERED:

1. That Newport Water's debt service obligations, with regard to the City of Newport's 2004 General Obligation Refunding Bonds, are hereby sanctioned and approved.

2. That the purpose, amount, character and terms of the City of Newport's 2004 bond issues are hereby deemed reasonable and in the best interests of Newport Water's ratepayers.

3. That Newport Water is hereby directed to timely file a Section 39-3-15 petition with the Division each time the City of Newport issues General Obligation bonds that will be used to fund Newport Water projects and be financed in whole or in part through Newport Water's rates.

Dated and Effective at Warwick, Rhode Island on March 10, 2005.

John Spirito, Jr.
Chief Legal Counsel

Thomas F. Ahern
Administrator

