

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE: PAWTUCKET WATER SUPPLY BOARD :
MOTION FOR INTERIM RELIEF : DOCKET NO. 3164
REGARDING GENERAL RATE :
APPLICATION FILING :

REPORT AND ORDER

On June 30, 2000, the Pawtucket Water Supply Board (“PWSB”), a non-investor owned utility, filed with the Public Utilities Commission (“Commission”) an application for a general rate increase pursuant to R.I.G.L. § 39-3-11. PWSB requested a revenue increase of 28.2%, to collect \$2,289,601 in additional operating revenues, for a total revenue requirement of \$10,396,841. The PWSB also moved for interim relief, pursuant to R.I.G.L. §39-1-32 and §1.17 of the Commission’s Rules of Practice and Procedure, seeking to implement interim rates subject to full examination and final order by the Commission. The impact of the rate proposal would result in a 29.8% increase across-the-board on all rate classes.

I. PAWTUCKET WATER SUPPLY BOARD

In support of its motion for interim relief, PWSB filed the testimony of Walter E. Edge, PWSB’s consultant, and of Pamela M. Callahan, Chief Engineer of PWSB. In his prefiled testimony, Mr. Edge argued that PWSB is in need of immediate rate relief for several reasons. First, Mr. Edge noted that PWSB owed \$300,000 to the Rhode Island Water Resources Board

("WRB") pursuant to an audit conducted in 1999, as well as approximately \$460,000 to the City of Central Falls ("Central Falls") due to an error in PWSB's calculation of a contractual obligation on water sales made by PWSB to Central Falls residents in past years.¹ Also, he explained the need for an increase of \$500,000 to \$900,000 per year in PWSB's "pay as you go" infrastructure replacement ("IFR") allowance.² Further, the PWSB had a test year shortfall of approximately \$1,000,000 from the authorized revenues, resulting from a significant reduction in wholesale and retail sales.³ Lastly, Mr. Edge emphasized the need for an immediate increase of \$180,000 in debt service costs for the interest on bond anticipation notes ("BANs") to be issued on behalf of PWSB by the Pawtucket Building Authority ("PBA"). He explained that before \$3,000,000 in BANs can be issued in the rate year, the financial advisor of the PBA requires proof that the Commission will allow debt service on the long-term bonds that will be ultimately be issued by the PBA to pay off the PWSB BANs.⁴ Without the funds from these BANs, PWSB would be unable to complete infrastructure improvements this summer.

¹ PWSB Ex. 2 (Edge Prefiled Testimony), pp. 2-3.

² Ibid., p. 3.

³ Ibid., p. 2.

⁴ Ibid., p. 3.

In her prefiled testimony, Ms. Callahan outlined various justifications for emergency rate relief. She noted that PWSB had sustained losses for three consecutive years; its cash reserves will be exhausted by July 2000 despite a rate increase in 1998.⁵ Also, Ms. Callahan emphasized that PWSB's IFR and capital programs, which are desperately needed because of PWSB's aging system, will be postponed at least a year if there is not interim rate relief.⁶ Ms. Callahan discussed PWSB's debt to WRB and Central Falls, as well as a debt to PWSB's wholesale customer, the Town of Cumberland, of \$67,523 due to a faulty meter.⁷ She observed that PWSB had recently and unexpectedly lost two large customers, Crown Yarn and Elizabeth Webbing, due to bankruptcy. This created an annual revenue loss of approximately \$350,000 with a combined delinquency balance of \$407,000.⁸ In conclusion, Ms. Callahan urged that interim relief be granted because without it necessary repairs on PWSB's treatment plant and transmission and distribution system would be delayed until next year.⁹

⁵ PWSB Ex. 1(Callahan Prefiled Testimony), p. 15.

⁶ Id.

⁷ Ibid., pp. 8-9, 11, 15.

⁸ Ibid., pp. 10, 15.

⁹ Ibid., p. 15.

II. THE DIVISION

Responding to PWSB's motion for interim relief, the Division of Public Utilities and Carriers ("Division") filed a memorandum on July 11, 2000. The Division opposed PWSB's motion, on the grounds that it provided insufficient information to permit the Commission to determine whether the criteria of R.I.G.L. § 39-1-32 had been satisfied. The Division argued that PWSB has not detailed an emergency necessitating interim relief. The Division also noted that PWSB had not specifically stated the amount of relief requested, nor explained whether the emergency could have been prevented by filing an earlier rate case. In conclusion, the Division requested that PWSB provide this information and that the Commission hold a public hearing on PWSB's request for interim rate relief.

III. PWSB'S REBUTTAL

PWSB responded to the Division's memorandum on July 25, 2000, stating that it was seeking the full amount of its general rate filing, \$2,289,601, as interim rate relief subject to refund. PWSB also argued that R.I.G.L. § 39-1-32 and the case law do not require PWSB to demonstrate how a prior filing would have prevented the need for interim relief. Finally, PWSB reiterated that the prefiled testimony of Mr. Edge and Ms. Callahan demonstrated an emergency which, if not immediately addressed, would interfere with the accommodation, convenience and welfare of its customers.

IV. HEARING ON INTERIM RATE RELIEF

Following notice, a public hearing on the motion for interim relief was conducted at the Commission, 100 Orange Street, Providence, on July 28, 2000. The following appearances were entered:

FOR PWSB:	Francis X. Flaherty, Esq. Joseph A. Keough, Jr., Esq.
FOR THE DIVISION:	Elizabeth A. Kelleher-Dwyer, Esq. Special Assistant Attorney General
FOR OSRAM SYLVANIA:	Gregory Benik, Esq.
FOR THE COMMISSION:	Steven Frias, Esq. Senior Legal Counsel

Mr. Flaherty's opening statement argued that emergency funds were required to address immediate needs at PWSB's plant, as well as to install seven miles of water main simultaneously with the Pawtucket Public Works Department's ("DPW") street repairs.¹⁰ To achieve these objectives, he asserted that \$3,000,000 in BANs were needed, requiring PBA approval. Such approval, would be forthcoming only if PWSB received \$180,000 for debt service as well as \$608,000 to address the PWSB deficit.¹¹ Mr. Flaherty contended these financial problems were primarily the result of lower-than-

¹⁰ T. 7/28/00, pp. 13-14.

¹¹ T., p. 14.

anticipated water consumption, and by the unanticipated bankruptcies of two large customers.¹²

Ms. Callahan, who serves as the PWSB's General Manager, discussed the need for emergency repairs at PWSB's treatment plant.¹³ She noted that half of the six flocculator motors are not in service, and that the entire flocculator system needs to be replaced at a cost of between \$90,000 and \$100,000.¹⁴ She said that PWSB's twelve backwash valves are in need of replacement, and that four of them need to be replaced at a cost of \$25,000 each.¹⁵ Further, she identified a need to replace all twelve rate controllers in PWSB's filtration system at the total cost of \$26,000.¹⁶ Finally, Ms. Callahan observed that the Rhode Island Department of Health in February 2000 directed the PWSB to repair its aeration basin and the exterior walls of its filters. The aeration basin repairs are estimated at \$50,000; the exterior wall repairs are projected at \$20,000.¹⁷ Failure of the flocculator system or the rate controllers would affect PWSB's water quality. Failure of the backwash

¹² T., pp. 15-16.

¹³ Ms. Pamela Callahan changed her name to Mrs. Pamela Marchand upon her recent marriage. T., p. 18.

¹⁴ T., pp. 20, 24.

¹⁵ T., pp. 23, 25.

¹⁶ T., pp. 27-28.

¹⁷ T., pp. 30-31.

valves would require the treatment plant to be closed.¹⁸ Ms. Callahan began working for PWSB in June 1999, and only recently became aware of the problems with the flocculator, backwash valve filters and rate controllers.¹⁹

Ms. Callahan discussed PWSB's plans to repair seven miles of water main during the fall at a cost of \$2,500,000.²⁰ Repair of the water mains would address customer complaints of "rusty water."²¹ She noted that coordination of water main repairs with the general street repairs planned by the DPW lowered the overall project costs.²² If the water main repair project missed the window of opportunity created by the DPW, the costs of the project might rise by approximately 20 percent.²³ In order to pay for the water main project and make necessary repairs at the treatment plant, PWSB anticipated that the PBA would issue \$3,000,000 in BANs.²⁴ Unfortunately, the PBA will not issue these BANs unless the PWSB has the funds to pay \$180,000 in debt service, and eliminates its \$608,000 deficit.²⁵

¹⁸ T., pp. 49-52.

¹⁹ T., pp. 32, 61-62, 66.

²⁰ T., pp. 36-37.

²¹ T., pp. 34, 38.

²² T., pp. 37, 42.

²³ T., pp. 53-55.

²⁴ T., p. 43.

²⁵ T., pp. 46, 57.

James McGuirk, PBA bond counsel, substantiated Ms. Callahan's testimony.²⁶ Without interim rate relief of \$788,000 from the Commission, PBA would not issue BANs for PWSB.²⁷ However, if the interim rate relief were granted, the BANs would be issued before the end of August 2000.²⁸

At the conclusion of the hearing, the parties gave closing arguments. Counsel for PWSB reviewed the testimony presented, and asserted that PWSB had demonstrated an emergency existed under R.I.G.L. § 39-1-32. He requested that, at a minimum, the Commission grant interim relief of \$788,000, sufficient to cover PWSB's deficit and BANs debt service.²⁹ Counsel for the Division left it to the Commission to determine whether an emergency exists under R.I.G.L. § 39-1-32. Noting that PWSB's situation is "somewhat unique", she conceded that the Commission could order interim relief under R.I.G.L. § 39-1-38,³⁰ but emphasized that it should be limited to \$788,000, and be subject to refund.³¹ The Division requested that the Commission restrict the proceeds of the BANs to the projects identified in

²⁶ T., pp. 109-110.

²⁷ T., pp. 140-141.

²⁸ T., p. 117.

²⁹ T., pp. 145, 147.

³⁰ T., pp. 148-149.

³¹ T., p. 149.

this proceeding.³² Counsel for Osram Sylvania, a corporate entity granted intervenor status in this docket, requested that if the Commission granted the increase, an adjustment should be allowed as a result of PWSB's cost of service study.³³ In conclusion, the parties concurred that any increase granted by the Commission apply equally to all rates except private fire service rates.³⁴

COMMISSION FINDINGS

The issue before the Commission is whether the PWSB's present financial circumstances constitute an emergency under R.I.G.L. § 39-1-32³⁵ so as to legitimize interim rate relief, and if so, the amount of such relief. The Commission has strictly interpreted R.I.G.L. § 39-1-32 in recent years. Beginning in 1993, with the Woonsocket Water Department's Request for Interim Rate Relief ("WWD Request"), the Commission announced that, "before a utility is entitled to temporary rate relief, it must first show an

³² T., p. 150.

³³ T., pp. 152-153.

³⁴ T., pp. 151-152.

³⁵ "Any general or public law notwithstanding the commission, when it determines that public safety requires, or that failure to act immediately will result in irreparable injury to the public interest, or that an emergency exists in the financial affairs of a public utility which, if not met immediately, will interfere with the accommodations, convenience and welfare of the people may issue an order effective immediately, but for temporary duration, until formal notice be given and a hearing had of the parties in interest. [Emphasis added.]

emergency as justification therefor.”³⁶ The Commission implied that a financial emergency must be caused by “recent unforeseen events.”³⁷ Similarly, in the area of tort law, the Rhode Island Supreme Court has consistently defined sudden emergency as a situation that “could not have been reasonably foreseen.”³⁸ The defense of sudden emergency cannot be claimed if the emergency arose as the result of the party’s own error.³⁹ Thus, the Commission has concluded that a public utility can claim an emergency exists in its financial affairs under R.I.G.L. § 39-1-32 only if: (1) it was caused by reasonably recent unforeseen events; and (2) the unforeseen events and/or financial emergency were not caused by an error committed by the utility itself.

In this docket, PWSB presented evidence that it had incurred losses for three consecutive years and a shortfall in its revenues of approximately \$1,000,000 in the test year. Although PWSB may not have foreseen these events, these problems are not “recent” but rather are longstanding. The Commission could have addressed these issues without the need for interim rate relief if PWSB had not delayed its general rate filing. This is similar to the WWD Request, in which the Commission noted that, “WWD had

³⁶ Order No. 14307, (issued October 7, 1993), at p. 1, quoting Gardiner v. Kennelly, 79 R.I. 369 (1952).

³⁷ Id.

³⁸ Malinowski v. United Parcel Service 727 A.2d 194, 197 (R.I. 1999).

³⁹ Ibid., p. 197.

consistently operated at a budget deficit,” and “WWD could have filed a request for general rate relief anytime during this deficit period in order to ameliorate its financial shortfalls.”⁴⁰

PWSB testified that a delay in granting interim rate relief “may” jeopardize the functioning of its water treatment facility. This prospect is not an adequate justification for granting extraordinary relief. PWSB must demonstrate that, without interim rate relief, the water system has been or will to a reasonable degree of certainty be jeopardized in its functioning. For instance, in the WWD Request, the Commission denied the utility’s request although WWD made vague assertions that the water system could be in jeopardy.

However, there was evidence that a faulty meter caused the Town of Cumberland to be over-billed to the tune of \$67,523. In February and April of this year, two large PWSB customers declared bankruptcy, causing an estimated \$350,000 loss of revenue for PWSB and an unpaid delinquency of \$407,000. The combined total of these losses is \$824,523. The Commission finds these three occurrences to be “recent unforeseen events.” Not only were these events recent and unforeseeable, but they were neither caused nor exacerbated by the utility. Therefore, the Commission finds that PWSB has

⁴⁰ See Order No. 14307, pp. 1-2.

a financial emergency, justifying interim rate relief of up to \$824,523.⁴¹

The remaining question is whether the PWSB has shown that a denial of interim rate relief “will interfere with the accommodation, convenience and welfare of the people.” This phrase can be variously interpreted. The Commission has historically chosen to strictly interpret it, however. While the failure to provide utility service at all, or to provide it safely, would constitute an interference with the “accommodation, convenience and welfare of the people,” the PWSB has not demonstrated that the denial of interim rate relief would preclude the provision of safe water to the people. PWSB has postulated a domino theory: unless it receives interim rate relief in the amount of \$788,000, it will not receive the benefit of the \$3,000,000 in BANs which would result in delay of the \$2,500,000 water main project, potentially increasing the cost of the project by 20% and perpetuating the problem of rusty water for many more months.

If PWSB were an investor-owned utility, the Commission might require the utility to absorb the increased costs of a delay. PWSB, however, is a non-investor owned utility. To deny interim rate relief would only result in the delay of a project of significant benefit to ratepayers, and increase the costs that will be paid by the ratepayers. Moreover, it appears that PWSB only recently became aware of the PBA’s requirement that the PWSB’s deficit

⁴¹ By contrast, the financial difficulties caused by three years of deficits *were* exacerbated by the PWSB’s delay in filing a general rate case. A self-created emergency does not merit interim rate relief.

be eliminated and debt service be prepaid on the BANs prior to issuance.⁴² Thus, PWSB cannot be clearly blamed for not filing this case earlier so as to receive the qualifying funds. Under these circumstances, the Commission must reluctantly conclude that a costly delay in this beneficial project would interfere with the “convenience and welfare of the people”.

The Commission agrees that this case is somewhat unique. Unfortunately, a decision in a unique case can create bad precedent. We take this opportunity to reiterate that the evidentiary standard for emergency interim rate relief is a difficult one to meet. The Commission expects to grant such relief infrequently, and only upon a showing of truly exigent circumstances.

In this docket, we grant emergency interim rate relief only because of the three recent unforeseen events, and the potentially costly delay in a project of significant benefit to the ratepayers. This docket would have been treated as an abbreviated rate filing if PWSB had not been in a cash flow deficit in recent years.⁴³ This unique set of facts is unlikely to recur.

At an open meeting on July 31, 2000, the Commission considered the evidence presented and unanimously approved emergency interim rate relief for PWSB in the amount of \$788,000, and directed that this revenue increase be recovered through an equal percentage increase to all rates, with the

⁴² T., pp. 57, 121.

⁴³ T., p. 69.

exception of private fire service. On August 8, 2000, PWSB filed its proposed tariffs in compliance with the Commission's open meeting decision of July 31, 2000.⁴⁴ On August 17, 2000, the Division represented through a memorandum that it had reviewed the filing by PWSB, verified the calculations, found it to be in compliance with the Commission's open meeting decision and recommended approval of the tariffs as filed.

At an open meeting on August 22, 2000, the Commission found that the compliance tariffs filed by the Company were in compliance with the open meeting decision of July 31, 2000 and approved said tariffs effective for consumption on and after August 1, 2000.

Accordingly, it is

(16398): ORDERED:

1. That the motion for emergency interim rate relief filed by Pawtucket Water Supply Board on June 30, 2000 is hereby denied.
2. That the Pawtucket Water Supply Board is hereby granted emergency interim rate relief to collect additional revenues in the amount of \$788,000.
3. That the funds obtained by the Pawtucket Water Supply Board from the \$3,000,000 bond anticipation notes to be issued by the Pawtucket Building Authority in August 2000 shall only be used for

⁴⁴ A copy of PWSB's compliance tariffs are attached as Appendix A hereto and incorporated by reference herein.

projects identified by the Pawtucket Water Supply Board in this docket.

4. That the revenue increase of \$788,000 shall be recovered through an equal percentage increase to all rates, except that the rates for private fire service shall not be increased.
5. That the revenue increase of \$788,000 is granted subject to refund.
6. That the compliance tariffs filed by Pawtucket Water Supply Board on August 8, 2000 are hereby approved for consumption on and after August 1, 2000.
7. That the Pawtucket Water Supply Board shall comply with all other findings and directives of this Report and Order.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND ON AUGUST 1, 2000, PURSUANT TO OPEN MEETING DECISIONS ON JULY 31 AND AUGUST 22, 2000. WRITTEN ORDER ISSUED OCTOBER 10, 2000.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner