

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 475

Approved August 12, 1982

WHEREAS, Chapter 335 P.L. 1980 (approved 5/19/80), Section 39-1-2 General Laws of Rhode Island, 1956, was amended so as to specifically provide that the Providence Water Supply Board is a "public utility" within the meaning of that section, and

WHEREAS, The meaning of that section places the Providence Water Supply Board under the jurisdiction of the Rhode Island Public Utilities Commission, and

WHEREAS, The Providence Water Supply Board submitted a request to the Rhode Island Public Utilities Commission for an increase in the rate schedule to generate sufficient income to operate the system, and

WHEREAS, The Rhode Island Public Utilities Commission in its Report and Order of June 18, 1981 allowed an increase in the water rates sufficient to generate a total accrued revenue requirement of \$10,345,181, and

WHEREAS, The Rhode Island Public Utilities Commission has acted expeditiously in deciding on the request for a rate increase filed by the Providence Water Supply Board, and

WHEREAS, Given the Water Supply Board status as a public utility, it is within the authority of the Rhode Island Public Utilities Commission to define the financial relationship between the Water Supply Board and the City of Providence, and

WHEREAS, The Public Utilities Commission adheres to the view that an "arms length" relationship between the Water Supply Board and the City of Providence "must be absolutely and scrupulously maintained", and

WHEREAS, The Public Utilities Commission has expressly conditioned the increase in rates in the Report and Order of June 18, 1981 on the establishment by the City of a "practice providing for independence and segregation of all revenues received by the Board", and "mandates that Board revenues and disbursements be separately accounted for through an "enterprise fund"

NOW, THEREFORE, BE IT RESOLVED, That the Providence Water Supply Board shall submit estimates of anticipated receipts and anticipated expenditures which shall be considered separately from the receipts and expenditures of the City of Providence General Fund and that financial transactions of the Providence Water Supply Board shall be conducted through an "Enterprise Fund" with services provided by the City to the Water Supply Board properly accounted for and paid for by receipts from sales of water,

BE IT FURTHER RESOLVED, That the Providence Water Supply Board shall establish practices and procedures for operating that are consistent with the requirements of a regulated utility, with full cognizance for the responsibilities of the owner of the system, the City of Providence.

IN CITY COUNCIL

AUG 5 1982
READ AND PASSED

Robert H. Lynch
PRES.

Rose M. Mendenhall
CLERK

APPROVED

AUG 12 1982

Vincenzo Ciancifi
MAYOR

IN CITY COUNCIL
JUN 3 1982

FIRST READING
REFERRED TO COMMITTEE ON FINANCE

Richard R. Clapp CLERK
ACTING

THE COMMITTEE ON
FINANCE

Approves Passage of
The Within Resolution

Rose M. Meadows
Clerk Chairman
July 27, 1982

Councilman Bealman and Councilman Turner
(By Request)

VII. ISSUES PRESENTED

As previously noted, the Division did not see fit to present direct testimony but rather relied on its cross-examination following analysis of the Board's filing, and further discovery. The City of Warwick questioned only the Board's approach to establishing a differential between in-city and out of city users.

Except as hereinafter specifically set forth, neither the Division nor the City of Warwick challenged substantially the Board's figures on its cost of service or capital requirements.

Further, as will be noted in a succeeding section of this Report, the Board in its filing did not seek any return on its investment as would a privately owned utility. In other words, the Board, consistent with the Commission's order in Docket 1314, sought only to recover its operating expenses and an allowance for capital requirements. In its rate design, the Board did set forth a differential between Providence and out of city users, the differential being based on a so-called "return on investment" and depreciation allowance, but the overall rate increases sought would not recover any more revenues for the Board than those required to pay for cost of service and capital needs. There is no allowance for "profit".

Issues raised by the Division are as follows:

1. Should the attrition allowance extend for the period through FY 1981-1982, (as proposed by the Board) or solely through the test year, adjusting for known and measurable changes and an inflation factor of 10 percent?
2. Should the Board's financial operations be independent of other City finances through the medium of an "enterprise fund"?

3. Should the Board "recover", as an offset to charges for city services, an amount to reflect past transfers from Board revenues to the City of Providence general fund?
4. Should the Board's pro forma revenues reflect potential increased revenues from sales of excess electric power to Narragansett Electric Company in line with those proposed in Docket No. 1549?
5. Should the insurance reserve fund proposed by the Board be reduced?

Additionally the City of Warwick raises the issue whether the proposed differential between in-city and out-of city users, as the same applies to sales at wholesale, is appropriate.

While the Commission has rejected the Company's projected operating expenses as the primary basis for ratesetting, it does believe that the forecast is a useful tool to be relied upon for the purpose of establishing an appropriate attrition allowance...."

In the present case the Commission believes that the Board's methodology of calculating an attrition allowance was based on credible evidence and notes that the Division presented no evidence to the contrary. Accordingly, on this record, the Commission approves the attrition allowance approach offered by the Board in its initial filing.

2. and 3. Fiscal Independence and Prior Transfers to the General Fund

We now turn to the related issues of (1) whether the City, pursuant to Rhode Island statutory and case law, has the authority to transfer funds from the Board's account to the general fund of the City of Providence without the express permission of the Public Utilities Commission, and (2) whether the Board's fiscal affairs should be managed so as to assure its fiscal independence through the medium of an "enterprise fund". The determination of these questions necessitates a review of the statutes pertaining to the Board's ability to fix its own rates and to control the transfer of its funds.

In 1915, the Board was established by P.L. 1915, Ch. 1278, entitled "An Act to Furnish the City of Providence With a Supply of Pure Water". This Act authorized the City of Providence to issue water bonds, but required that a sinking fund be maintained for the redemption of these bonds. This sinking fund was to be comprised of:

"all excess receipts from water rents over and above the necessary expenses of managing the water works of said city, the interest on loans and bonds issued on account of such water works,

and any amounts transferred to any water works depreciation or extension fund...[a]ll premiums arising from the sale of the bonds issued by authority hereof...[t]he net proceeds from the sale or lease of any buildings or lands authorized hereunder..."

This Act, which has been amended on numerous occasions, was amended by P.L. 1936, Ch. 2316, wherein the Board was permitted to sell water directly to consumers of various towns at retail or to town water or fire districts at wholesale. In addition, the Providence Commissioner of Public Works was authorized to determine the rates at which water should be sold to users or consumers.

Of additional relevance are Sections 6.27 and 6.28 of the Providence City Charter (enacted by P.L. 1945, Ch. 1665). These sections create an apparent conflict concerning the application of surplus funds generated by the Board. Section 6.27 requires that "all revenue from the water supply system...be applied only to the operation and maintenance of said system and for the payment of interest on and the retirement of bonds or for other purposes of said system..." Section 6.28, however, which applies to surplus funds in general without making any specific reference to the Board, requires that any surplus resulting from excess revenue receipts over estimates and unencumbered balances of appropriations shall revert to the general fund of the City of Providence.

At the Commission's request, John Rotondi, Providence's Acting City Solicitor interpreted these charter sections as follows:

"MR. ZURIER: And the last one made reference to the proposed city charter. Now, looking at the present state of the law in Providence, what -- and looking specifically at Paragraphs 2 and 3 or Section 627 and 628, how do you

interpret, as the City Solicitor, the authority of the City of Providence with respect to revenues of the Water Board, can it be used for any purpose other than is set out in Section 627?

THE WITNESS: I don't believe it can.

MR. ZURIER: At 627 says shall be applied only to the maintenance and operation of the system, the payment of interest on retirement of bonds and for other purposes of said system, said system meaning the, presumably, the Water Board. And the succeeding section of the charter, 628 which talks about reversion of the funds resulting from excess revenue would not relate then or is it your opinion that it would not relate to excess revenue from the Water Supply Board?

THE WITNESS: It is my opinion that it would not relate to excess revenue from the Water Supply Board."

(Tr. 4/16/81, pp. 49-50)

We note that Section 808 of the Home Rule Charter for the City of Providence approved by P.L. 1981, Ch. 37, provides that any excess revenue from the water supply system, as determined by the Board, be paid into and credited to the general fund. We decline to address this Section because the Home Rule Charter does not take effect until June of 1983.*

* In 1967, two other apparently conflicting acts were passed pertaining to the authority of the Board to fix its own rates. Public Laws, 1967, Ch. 162, amending P.L. 1915, Ch. 1278 discussed above, provided that "in case the City of Providence... elects to sell water directly to water users or consumers, the Board ...shall have the right to determine the rate at which said water shall be sold." In the same year, however, P.L. 1967, Ch. 156 was enacted, which section includes within the term "public utility" any public water works and water service owned by any city which sells water, on a wholesale or retail basis, outside the territorial limits of such city or town. (The Board clearly falls within this definition as it sells water to communities outside of the City of Providence.) By virtue of this latter statute which gives the Board the status of a public utility, it appeared then the Commission had to approve any and all rates set by the Board.

The effect of these two statutes on the Board's ability to fix rates independent of the Commission was determined in City of Providence v Public Utilities Commission 414 A.2d 465 (1980), wherein the Supreme Court of Rhode Island held that because P.L. 1967, Ch. 162 became effective subsequent to P.L. 1967, Ch. 156, Chapter 162 repealed by implication Chapter 156, thus giving effect to Chapter 162 and eliminating the jurisdiction of the Commission over the Board. In response to this decision, the Legislature, in P.L. 1980, Ch. 335 (approved May 19, 1980) specifically defined the Water Supply Board of the City of Providence as a "public utility," thereby clearly establishing the jurisdiction of the Commission over the Board.

Given the Board's status as a public utility, it is within the authority of the Commission to define the financial relationship which we believe must exist between the Board and the City of Providence. See R.I.G.L. 1956 (1977 Reenactment) §39-1-1, §39-1-38, In Re Providence Water Supply Board, docket number 1314 (1978).

In our earlier order in Docket No. 1314, supra, we delineated the financial relationship between the City of Providence and the Board and determined that an "arm's length" relationship must exist in order to eliminate the draining of the Board's reserve fund by the City and the consequent undermining of the self sufficiency of the Board and its ability to render vital services. With our jurisdiction reaffirmed, we continue to adhere to our view that such a relationship must be absolutely and scrupulously maintained, and we repeat our position that no rate increases with special allowances for renewal and replacement to upgrade the water system will be sanctioned if the Board does not remain independent from the City.

The Board is now expressly defined as a "utility". As we noted in Docket No. 1314, in another context, paraphrasing Gertrude Stein, "a utility is a utility is a utility". Section 39-1-1 of the General Laws vests in the Commission and the Division

"The exclusive power and authority to supervise, regulate and make orders governing the conduct of...(public utilities) for the purpose of increasing and maintaining the efficiency of such companies, according desirable safeguards and convenience to their employees and to the public, and protecting them and the public against improper and unreasonable rates, tolls and charges..."

In exercise of this jurisdiction, we would regard any diversion of water revenues by the city for purposes not comprehended within the scope of this Report and Order as a practice proscribed by Section 39-4-10 of the General Laws or other appropriate statutory authority. We further expressly condition the increase in rates provided herein on establishment by the City of a practice providing for independence and segregation of all revenues received by the Board.

Our decision to reaffirm this approach was supported by the unanimous view of all who testified to this issue. It has been urged vigorously, not only by the Division and Intervenor City of Warwick; the City's own consultant Laventhol & Horwath, in its 1979 study recommended

- "1. The City should create a separate enterprise fund for the PWSB. This would establish the PWSB's financial independence, as all surpluses and deficits would remain in this separate enterprise fund.
2. The separate enterprise fund should be set up retroactively to the fiscal year 1978 which is the year after the decision of the Rhode Island Attorney General that rate setting was subjected to Public Utilities Commission (PUC) approval.
3. All transactions between the PWSB and the City of Providence should be handled on an "arms length" basis.
(Ex. P-12, p. 13).

The fiscal independence of the Board has further been recommended by the former acting finance director of Providence and the Mayor's special finance committee (Tr. 3/25/81, p. 52). The Board itself believes such independence through the accounting method of an "enterprise fund" is appropriate. (See Tr. 3/25/81, p. 55). Board witness Easton reaffirmed that an enterprise fund "is in accordance with generally accepted accounting principles" and agreed that such a fund would represent "sound management" (Tr. 3/25/81, p. 32-33)

The Commission concurs with all these views and therefore mandates that Board revenues and disbursements be separately accounted for through an "enterprise fund". The Commission directs that the Board report to the Commission on or before October 1 detailing the manner in which the same has been or will be implemented.

The continued existence of an arm's length relationship mandates that no funds whatsoever be transferred to the general fund of the city of Providence without the express prior approval of the Commission. While the Commission acknowledges that transfers of surplus funds from the Board's account to the City's general fund have occurred in the past, we decline to engage in retro-active ratemaking or to take any action with respect to such transfers that occurred prior to the enactment of P.L. 1980, Ch. 335, on May 19, 1980 at a time when the Commission was without jurisdiction over the Board.

Therefore the Commission will not direct that the value of city services be offset by a hypothetical working capital value of the amounts of prior transfers as the Division urges. We recognize that the City heretofore has had complete responsibility for the acquisition, ownership, maintenance and management of the plant. Its full faith and credit remains pledged on the general obligation bonds issued and still outstanding. Our order today proscribes future transfers only.

In reaching this result, we are mindful that the Providence Water Supply Board has historically furnished water of the highest quality. Indeed, the quality of the Board's service was specifically not an issue in this docket (See Tr. 6/3/81, pp. 3-4).

The Commission is concerned that the continuous provision of water service be maintained at its present fine level. We note that the Board's obligation to furnish service to out of city users, at wholesale and retail is not a matter of choice by Providence but rather constitutes its legal obligation by statute.

Our decision grants virtually intact the relief sought by the Board including its full request for an attrition allowance and for meeting the cost of city services, objectively determined and under an "arm's length" basis. We have further accepted the Board's method of establishing differential rates at wholesale and retail, as between in-city and out of city users. This recognition is based on generally accepted public utility accounting principles.

The Commission is mindful of the fiscal plight of the City of Providence and for that reason has approached this case on an expedited basis* with some priority over several applications filed earlier. Our purpose has been to let the Board be self-sustaining and not be a burden to the City of Providence.

But now the burden shifts to the City of Providence. We expect this Report and Order to be implemented in good faith - under an "enterprise fund" accounting system. We expect to receive prompt reports on the establishment of this fund, and of the insurance program herein provided. We expect careful segregation of all water revenues and careful accounting of the

*The Board's filing was received on February 11, 1981. Under Section 39-3-11, General Laws of 1956 (1977 Reenactment), our decision is not due until November 11, 1981.

separate expenses incurred by the Board, particularly those paid to the City for services rendered.

In this way, the Commission intends to retain public confidence in what was referred to at one hearing as "one of the ten best (water systems) in the world". (Tr. 4/21/81, p. 17).

Accordingly, it is

(10453) ORDERED: That a total revenue requirement of \$10,345,181 which includes an increase of \$2,366,680 or 29.7% from all sources, including sales of water at wholesale and retail to in city and out of city customers is approved. The Board is directed to present a tariff schedule reflecting this amount within 20 days hereafter, such tariff to be allocated among wholesale, Providence retail and out of city retail customers in accordance with this Report and Order.

FURTHER ORDERED: The Board shall report to the Commission within 90 days of this order, and quarterly thereafter, on the status of implementation of the order, including the establishment of a system of reciprocal accounts with the City, and the methodology used therein, and the establishment of an "enterprise fund" for segregation of and separate accounting for all revenues received for water service.

FURTHER ORDERED: That the Board shall report to the Commission within 90 days on the implementation of the insurance program established by this order.

FURTHER ORDERED: That the Board shall report to the Commission within 90 days, and every 6 months thereafter on the status of negotiations on sale of excess electric power and revenues derived therefrom.

FURTHER ORDERED: That the Board shall file annual reports with the Commission in the manner provided by law directed in this order, commencing with the year 1981.

DATED AND EFFECTIVE AT PROVIDENCE, RHODE ISLAND this Eighteenth day of June, 1981.

Edward F. Burke
Edward F. Burke, Chairman

Eleanor L. Miller
Eleanor L. Miller, Commissioner

Andrew L. Niven
Andrew L. Niven, Commissioner

RICHARD A. CARROLL
Chairman
ALFRED T. CICCONE
Member
JOHN A. DOHERTY
Member
ROBERT F. HOWARD
Member
VINCENT J. CIRELLI
Councilman
LAURENCE K. FLYNN
Councilman
JAMES R. BERNARDO
Ex-Officio

WATER SUPPLY BOARD



CITY OF PROVIDENCE

WILEY J. ARCHER
P.E., Acting Chief Engineer
WILLIAM J. MCGAIR
Legal Advisor
JAMES A. LOMBARDI
Secretary

May 27, 1982

Mr. Stephen Woerner
Internal Auditor
City Hall
Providence, Rhode Island

REF: Water Supply Board Enterprise Fund Accounting System

Dear Sir:

Attached is a suggested Council Resolution which addresses the Order of the R. I. Public Utilities Commission for the Water Supply Board to operate under an "enterprise fund". Also attached are pertinent excerpts from the Public Utilities Commission decision of June 18, 1981.

To date, the accounting firm of Sheehan Parmalee has been working diligently upon the assets records, inventory system, and code of accounts with full anticipation that the enterprise fund system would be implemented on July 1, 1982.

Particular attention should be directed to the following pages of the Public Utilities Commission's decision: pg. 23, re: "arms length" relationship; pg. 25, re: transfer of funds to City by the Water Supply Board; pg. 39, re: burden of the City to implement "enterprise fund".

Periodic reports have been made to the Public Utilities Commission of progress made towards implementation of the system.

Very truly yours,

Wiley J. Archer, P.E.
Chief Engineer

ms

encs.

cc: Mr. Jerome Baron
Finance Director