

WATERBURY / WATERTOWN

WATER USE CHARGES AND SEWER TREATMENT CHARGES

Report on the History of the Waterbury Water System and Watertown Purchase of Water from Waterbury;

Report on the History of the Waterbury Sewer Treatment Plant and Watertown Treatment of Watertown Sewers;

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There has been a great deal of discussion concerning the referenced matter. In addition, there has been criticism of the Watertown Town Council in connection with this matter. The history of this matter and the position of the Town of Watertown in this matter has not been adequately presented to the Watertown citizens and has not been adequately taken into account. The purpose of this Report is to provide a detailed history of the City of Waterbury's water system and Watertown's purchase of water from Waterbury. This Report will also include a detailed history of Watertown's relationship with Waterbury with respect to treatment of sanitary sewage.

RE: WATER

Position of Waterbury

Waterbury, for the first time in more than 80 years, considers Watertown the same as a regular retail water use customer and rate payer. (Waterbury's Amended Complaint dated January 27, 2020, Entry No. 113.00)

Position of Watertown

Watertown is not now and has never been a regular retail water use customer. Watertown, for more than 80 years, has been more in the nature of a "Special Partner" with respect to sharing water from the Waterbury watershed. Watertown has purchased and used water from the Waterbury waterworks system since at least 1939 pursuant to a series of water supply contracts. Watertown has always paid a bulk rate or wholesale rate for water, taking into account Watertown's special partner status ("bulk rate") and the circumstance that Watertown does not use all the functional components of Waterbury's water system, and that Watertown does not receive the same services as Waterbury's retail customers. The bulk rate has always been based upon a reasonable approximation of the cost to Waterbury to provide water to Watertown. Watertown has approximately 5,000 municipal water customers. Watertown has its own public water agency and its own water distribution system (i.e., pipelines. Watertown operates, maintains and repairs its own water distribution system. Watertown bills its water users directly. Watertown does not have a separate public water supply. Waterbury is the sole source of water for Watertown. In other words, Waterbury provides a bulk water supply to Watertown and

Watertown through its own water agency distributes that water and services all of its water customers including operating and maintaining its own waterworks distribution system.

History of Waterbury and Watertown Water Supply Relationship

1. Waterbury Water System, The Early Years

In 1867 the citizens of Waterbury voted to construct Waterbury's first public water supply and distributing reservoir. This East Mountain reservoir was constructed in 1869. This reservoir quickly proved insufficient. Two additional reservoirs, the Cook Reservoir and the Prospect Reservoir were constructed between 1879 and 1881. Again, the supply was quickly outpaced due to rapid domestic and industrial growth. In 1883 Waterbury supplemented its water supply by pumping water from the Mad River.

During 1893 Waterbury took its first bold step into Litchfield County seeking water supplies by securing diversion rights to 18 square miles of watershed on the West Branch of the Naugatuck River ("West Branch"). This required State Legislative approvals and an agreement with the Town of Washington. (Exhibit 1, Water Supply, City of Waterbury, Description, Data and Recommendations as prepared by Bureau of Engineering, Waterbury, Connecticut.)

2. State Legislature Authority for Expansion of the Waterbury Water Supply

Waterbury and Town of Washington Agreement

Special Act 252, passed April 25, 1893, by the General Assembly of the State of Connecticut, provided, inter alia, that Waterbury is authorized to take and convey from any and all brooks, rivers, springs, ponds, lakes and reservoirs within the limits of the County of Litchfield such supply of water as the necessities or convenience of the inhabitants of Waterbury may require and further to construct any and all needed infrastructure for conveying said water from the County of Litchfield into and through Waterbury. (Exhibit 2, Special Act 252)

Special Act 252 was later modified by Special Acts 344 (1909) and 346 (1919), which excepted from the scope of Special Act 252 the waters of Bantam Lake in Litchfield County and the waters of its tributaries and the waters of the Naugatuck River northerly of the southerly borough line of the Borough of Torrington. (Exhibit 3, Special Acts 344 and 346)

Washington Agreement. On or about May 3, 1921, Waterbury and the Town of Washington entered into an agreement ("Washington Agreement"), which provides, inter alia, that Waterbury is authorized to divert water from the West Branch of the Shepaug River, a river located in Litchfield County and flowing through the Town of Washington, with such diversion to occur in accordance with Special Act 252 and in accordance with other terms and conditions set forth in the Washington Agreement.

The Washington Agreement is significant in that it expressly provides that water diverted from the Shepaug watershed to the West Branch Waterbury reservoirs may be used to serve a number

of towns including Waterbury, Washington, Litchfield, Thomaston, Watertown and the village of Platt Hills. (Exhibit 4, Shepaug River Agreement, May 1921)

Special Act 391, passed June 14, 1921, provided, inter alia, that Waterbury was authorized to supply water to continuous municipalities, boroughs and fire districts. Said Special Act provides in pertinent part as follows “the city of Waterbury is authorized and empowered, by its mayor and a majority of its aldermen, to contract to supply water for domestic purposes and fire protection to any municipality, borough or fire district, through which, or contiguous to which the water supply mains of said city are or shall be laid, or in which its reservoir or reservoirs are located (Watertown), or may contract to supply water for domestic purposes and fire protection to any private company, chartered for the purpose of supplying water to such municipality, borough or fire district on such terms and rates as shall be just and equitable to the contracting parties.”

In accordance with the legislative Acts and the Washington Agreement, it is clear that the West Branch water supply and the Shepaug water supply were expressly authorized to include Watertown. The legislature approved that such water shall be provided to Watertown on such terms and rates as shall be just and equitable.

In accordance with the Legislative Acts and the Washington Agreement, Waterbury expanded its water supply as described herein into Litchfield County. Watertown is part of Litchfield County and part of the watershed accessed by Waterbury. (Exhibit 5, Special Act 391)

3. West Branch

Waterbury first constructed the Wigwam Dam and a 36 inch supply main, ten miles long, to Waterbury. The Wigwam Dam and reservoir are located in Watertown. Water from the Wigwam Dam first entered Waterbury in 1895. In 1902, the Wigwam Dam was raised to a height of 91 feet. During 1908, Waterbury authorized the construction of a second dam at a higher elevation, the Morris Dam. The Morris Dam was completed in 1913. Notwithstanding this West Branch watershed and two new reservoirs, the water supply proved dangerously low during drought conditions. (See, Exhibit 1)

4. Shepaug Development

By 1908 Waterbury was in urgent need of further water resources. Bantam Lake and its tributaries and the Naugatuck River watershed were precluded by legislative Acts. Waterbury began investigation of the Shepaug watershed west of Bantam Lake. Following the Special Act of 1921 and the Washington Agreement, Waterbury initially acquired a 37 square mile watershed in the Woodville section of Washington (“Initial Shepaug watershed”). Waterbury immediately constructed a water transport tunnel (“Shepaug tunnel”) from the Initial Shepaug watershed to a location above the Morris Dam. The Shepaug tunnel was completed by 1923. The Shepaug tunnel runs 7 miles from what is now the Shepaug Dam to a discharge point above the Morris Dam. This location is now part of the Pitch Reservoir. The Pitch Reservoir is one of the three

West Branch reservoirs and was completed in 1942. The Pitch Reservoir is the highest elevation in the West Branch and delivers water to the Morris Reservoir at a mid elevation and in turn to the Wigwam Reservoir at the lowest elevation. The Pitch Reservoir is also critical to the water pressure needed to transmit water to Waterbury.

The Shepaug Dam was completed in 1933. By 1964, Waterbury added approximately 10 square miles of additional watershed to the Shepaug watershed, constructed a new reservoir, the Cairns, and constructed a second dam at this location.

The expanded Shepaug watershed now included 48 square miles of watershed area, two dams, two reservoirs and the seven mile transport tunnel ("Shepaug Development"). The Shepaug Development has been a critical component of the Waterbury water supply continuously from 1923 to the present. This is a period of almost 100 years. Again, Watertown was authorized and intended by all parties to be a participant or special partner in this water supply and has been a municipal bulk customer of this water supply since at least 1939. (See, Exhibit 1)

5. Transmission

Beginning 1895 and for more than two decades thereafter the sole water transmission main was a 36 inch main from the Wigwam Reservoir to Waterbury. During the 1920s Waterbury began work on a second transmission main. The first part of this transmission main was an aqueduct known as Steele's Brook Tunnel which ran from the Wigwam Reservoir to approximately Northfield Road and Fernhill Road in Watertown, a distance of 7,400 feet. Steele's Brook Tunnel was completed in 1929 and transported water until approximately 1948. From the end of Steele's Brook Tunnel, the water transmission was then carried in a high service water main running along Northfield Road in Watertown, westerly to Main Street in Watertown, and along Main Street in a southerly direction to Waterbury. In 1948 the Steele's Brook Tunnel began to cave in. After a number of temporary repairs, the Steele's Brook Tunnel was abandoned in favor of a 36 inch high service main for its entire 10 mile length to Waterbury. It is significant that the Wigwam Dam is located in Watertown and the main transmission line from the Wigwam Dam to Waterbury is located in Watertown. The primary Waterbury transmission main still exists at the same location in Watertown. (See, Exhibit 1)

6. Oakville Fire District (Watertown)

The Oakville Fire District ("Oakville District") was established pursuant to a Special Act of the Connecticut legislature, approved on October 13, 1910. The Oakville District charter was amended by a series of Special Acts between 1923, with the latest amendment approved July 15, 1953. Oakville District included substantial territory within the Town of Watertown known as the Oakville section. The Oakville District charter authorized the establishment of a waterworks system. The system then assumed and expanded a then relatively small system constructed by the Watertown Water Company. It is known that Waterbury supplied water to both the

Watertown Water Company and the Oakville District prior to 1939, but no written agreements exist. (Exhibit 6, Oakville Fire District Charter)

1939 Agreement

On November 20, 1939 the Oakville District entered into a written contract to purchase all of its water supply from Waterbury. Said agreement provided, inter alia, “[s]aid Fire District SHALL buy, and said City SHALL sell such quantity or quantities of water as may be required by said Fire District, subject to the conditions of this agreement.” This contract provision is significant because it required the Oakville District to contract for all of its water from Waterbury. This was at a time when Watertown could have obtained similar legislative approval to obtain its own water supply in Litchfield County. Watertown, in reliance upon this contract provision, did not pursue development of its own water supply at that time.

This is a significant point. For example, beginning in 1913, the Watertown Fire District obtained legislative approvals similar to Waterbury. The Watertown Fire District obtained a Special Act Charter from the legislature, first approved on May 22, 1913. This Special Act was amended through a series of Special Acts approved on March 20, 1917, June 24, 1921, May 16, 1923, June 22, 1927 and April 5, 1933. Said Special Acts authorized the Watertown Fire District to divert water from Litchfield County the same as the Waterbury legislation. The Watertown Fire District territory includes approximately 2,000 acres within the center portion of Watertown. The Watertown Fire District has approximately 2,300 domestic and commercial water customers. In accordance with the legislative authority, the Watertown Fire District acquired a substantial watershed in Bethlehem and Woodbury within Litchfield County. The Watertown Fire District constructed a large Well field in Woodbury in 1924. The Watertown Fire District Well field was supplemented with substantial watershed in Bethlehem. The Watertown Fire District constructed a reservoir and dam in Bethlehem. The dam was completed in 1957. The Watertown Fire District during the same time period that Waterbury was developing its two watersheds in Litchfield County developed its own watershed in Litchfield County based on similar legislation. The point is that Watertown did not take advantage of the same opportunity to develop its own water supply the same as Waterbury and the same as the Watertown Fire District due to this mandatory and mutually beneficial 1939 Agreement.

Said 1939 Agreement provides that Watertown would access the Waterbury water supply through one or more bulk meters. Said agreement provides that the Oakville District would pay for said water at a bulk rate equal to the same rate as is charged to users of similar quantities of water within Waterbury plus 10 percentum. On September 30, 1942 the Oakville District entered into a subsequent water supply agreement with Waterbury. This agreement essentially expanded the locations of water delivery to the Oakville District system but did not change the bulk billing rate. Waterbury and Watertown continued this arrangement substantially unchanged until 1989, a period of fifty years. Pursuant to a Special Act of the Connecticut legislature in 1969, Watertown consolidated the Oakville District into a department of Watertown. The Oakville

District transferred all of its water distribution facilities and other assets to the Watertown. The Oakville District ceased to exist. Watertown assumed all liabilities and assets of the Oakville District including the two referenced water supply agreements with Waterbury. Again the water supply relationship remained unchanged until 1989 with respect to the bulk rate Watertown paid for its water supply. (Exhibit 7, 1939 Agreement)

7. Waterbury Filtration Plant

In 1979 Waterbury began the design to construct a water filtration plant in accordance with a directive from the federal government to improve water quality. Waterbury requested that Watertown provide an estimate of its water usage for a period of 35 years into the future as part of the design capacity of the filtration plant. Waterbury designed the filtration plant at approximately thirty-eight million gallons per day “MGD” and Watertown reserved three million GPD of this amount. The total cost of the filtration plant was approximately 33 million dollars. Watertown was obligated to pay Waterbury 7.85% or \$2,590,500.00 for its reserved capacity interest, thus eliminating any capital risk for Waterbury. The filtration plant was completed in 1987. The filtration plant is located in Watertown. Significantly, the Wigwam Reservoir, the Waterbury filtration plant, 705 acres of the West Branch watershed and the main water transmission line to Waterbury are all located in Watertown.

On February 10, 1989 Waterbury and Watertown entered into a water supply agreement (“1989 Agreement”). The 1989 Agreement was for a term of 25 years with two automatic 10 year extensions unless terminated 2 years before a 10 year extension began. The 1989 Agreement continued to recognize that Watertown was a bulk water user and rate payer. Water payments were based upon an agreed formula that took into account the portions of the Waterbury filtration and distribution system that Watertown used. The concept being that Watertown would pay a reasonable and proportionate share of the Waterbury filtration and distribution system only to the extent that Watertown actually used said portions of the filtration or distribution system. The distribution component of costs in the 1989 Agreement was called operation and maintenance or “O&M”. The O&M costs for Waterbury’s distribution system are not segregated from the O&M costs of other functions of Waterbury’s water system (i.e., supply, treatment, storage and transmission), so could only be estimated by Waterbury’s staff.

The 1989 Agreement at Appendix 2 contained a chart of accounts identifying all of the accounting line items used or to be used by Waterbury to track its costs of its entire waterworks system. Appendix 2 identified the line item accounts that Watertown used and the line item accounts that Watertown did not use.

Appendix 2 broke the Watertown payments into 2 categories. Category 1 is Watertown’s proportionate share of the capital costs of the Waterbury filtration plant. This cost is 3/38.2 or 7.85%. This 7.85% of the capital costs is based on Watertown’s designed reserve capacity of 3

MGD. The second component, O&M, of the water charge is directly related to the chart of accounts, taking into account the line items representing portions of the O&M of the water system used by Watertown. Said Appendix 2 provides that Watertown will pay the O&M costs based on Watertown's actual usage which at that time was approximately 0.9 MGD. The actual usage in 2019 was 0.8 MGD. The O&M costs of Watertown water for the one year prior to the 1989 Agreement was agreed at \$1.25 CCF (1 CCF = 748 gallons). For all periods beginning July 1, 1989 Watertown water would be billed based upon the contract bulk rate. Again, the 1989 Agreement recognizes a bulk rate required by the 1921 legislation and adhered to for 50 years based upon the initial 1939 water agreement. (Exhibit 8, Waterbury-Watertown Water Agreement, Feb 10, 1989)

Waterbury-Watertown Billing Dispute

Waterbury and Watertown were locked into a multi-year dispute over water billing pursuant to the 1989 Agreement for the following reasons. Watertown disputed the amount of its water bills for the following reasons:

1. Waterbury failed to maintain the costs of its waterworks system in accordance with Appendix 2 of the 1989 Agreement.
2. Waterbury bonded for the construction costs of the filtration plant several years before the filtration plant was started and funds were not yet needed for construction. Waterbury invested the funds. Waterbury paid the bond premiums out of the water accounts but put the investment income into the general fund to offset general taxes. This inflated the actual capital costs of the filtration plant. The investment income should have been put into the filtration plant construction account.
3. The Waterbury water accounts paid \$3,000,000.00 each year into the Waterbury general fund to reduce general fund taxes.
4. Waterbury sued the filtration plant construction contractor and recovered 8.1 million dollars from the litigation. Waterbury funded the litigation costs in the amount of approximately \$3,037,471.00 out of its water accounts. Waterbury put the 8.1-million-dollar recovery into its general fund to offset general taxes. Waterbury should have put the 8.1 million dollars towards reducing the bonded debt for the filtration plant that Watertown was then still paying at the rate of 7.85% of the capital costs principal plus interest.
5. Waterbury failed to provide an annual audit of its water works system as required by the 1989 Agreement.

Waterbury sent water bills to Watertown without taking into account any of the above financial issues and without any explanation as to how the amount of the water bill was determined.

Watertown estimated the correct amount of the Watertown water bills at 75% of the amount billed. For several years Watertown paid 75% of each water bill. Watertown did not pay any of the interest being accrued on the unpaid portion of the bills. This billing dispute continued for more than ten years.

Following a series of meetings between Watertown representatives and Waterbury representatives, an agreement was reached on all water billing disputes. On November 15, 2006, Watertown and Waterbury agreed that all unpaid principal and interest on water bills claimed by Waterbury would be forgiven. Watertown agreed to forgive any claim that the water bill payments (at 75%) were more than the amount that should have been properly billed ("Settlement Agreement"). Significantly, Waterbury provided a Schedule A to this Settlement Agreement. Schedule A replaced the Appendix 2 of the 1989 Agreement. This Schedule A water billing formula was intended to conform to the actual chart of accounts that Waterbury used to track its O&M costs of its water system. Water billing proceed without incident throughout the remainder of the 1989 Agreement term. In other words, Waterbury again confirmed and continued the special partner status of Watertown paying a bulk rate for water. The bulk rate was reasonably related to the Waterbury cost to deliver the water to the bulk meters.

The point is that from 1939 through 2018 there is a documented past practice that Waterbury correctly was paid for water at a bulk rate that is reasonable and just and equitable, taking into account the legislative history, the Washington Agreement and the statutory rule that water and sewer costs must be reasonably related to the actual costs of providing same. (Exhibit 9, Settlement Agreement, Mutual Release and Covenant Not to Sue, Nov. 15, 2006)

8. 2013 Agreement

On June 27, 2013 Waterbury and Watertown entered into a water agreement for a period of five years ("2013 Agreement"). The 2013 Agreement provides the cost of water for operation and maintenance to be \$1.12 per CCF with an annual increase of 2% per year. In addition, there is the possibility of an increase equal to any percentage increase imposed on Waterbury customers. The 2013 Agreement again recognizes a bulk rate but eliminates any reference to Waterbury's actual costs of providing the water to Watertown as part of the water bill computation. At the end of the five year term of the 2013 Agreement, Waterbury requested that Watertown pay a substantial increase of almost double the water rate in the 2013 Agreement. Watertown continued to pay at the prior bulk rate based on the 2013 Agreement and past practice. Waterbury refused to negotiate in good faith, taking into account the history of the Waterbury/Watertown special partner relationship as described herein and failing to take into account other provisions of Connecticut law. By Return Date January 22, 2019, Waterbury commenced the present action against Watertown, seeking to impose its arbitrary, improper and illegal water rates on Watertown. (Exhibit 10, 2013 Water Agreement Between Town of Watertown and City of Waterbury, June 27, 2013)

9. Statutory Provision and Court Precedent

The pertinent statute with respect to a municipal water company selling water is Chapter 102 of the General Statutes which deals with the water works.

“Under chapter 102 of the General Statutes, which deals with waterworks, any town, city or borough or district...may acquire, construct and operate a municipal water supply system, General Statutes 7-234, and establish rates which shall be “just and equitable,” and shall be sufficient in each year for the payment of the expense of operation, repair, replacements and maintenance of such system and for the payment of the sums herein required to be paid in the sinking fund. General Statutes 7-239.” (internal quotations omitted) *Pepin v. Danbury*, 171 Conn. 74, 85 (1976).

It is significant that the statutory language of General Statutes Chapter 102 which mandates that “established rates shall be just and equitable” is identical to the Special Act legislative mandate that a municipality that is provided water by contract shall pay rates that shall be “just and equitable”.

In *Pepin*, Danbury added 7.5% or 15% to each water or water and sewer bill, respectively, to be diverted to the general tax fund. The trial court and the CT Supreme Court concluded that the general tax component of the water and sewer bills is in violation of the statute and in excess of the cost needed to operate the water and sewer systems respectively. The court found the water and sewer rates were not just and equitable. In this case, Waterbury is for the first time in 80 years arbitrarily seeking to increase water and sewer rates to amounts that have no relation to this just and equitable standard.

The term “just and equitable” means that one cannot charge a user of a service for discrete components of a service that 1. Are not available to the user, or 2. That the user does not benefit from.

The basic legal requirement of any rate is that it must be based on the cost providing the service for which it is charge. Waterbury is attempting to charge Watertown a water rate that includes the costs of function (i.e., the Waterbury distribution system) which Watertown does not receive nor use nor benefit from. This cost, based on date and estimates provided by Waterbury’s own staff, is a significant portion of the total costs of Waterbury’s water system.

Summary

The West Branch watershed and the Shepaug Development (“Litchfield County watershed”) constitute the sole source of Waterbury water.

The Litchfield County watershed was authorized by Legislative Special Acts and the Washington Agreement. Watertown has always been included as a special partner with rights to share this water by express provisions. Watertown has protected rights to share this water.

Significant parts of the West Branch water facilities are located in Watertown.

Watertown receives its bulk water supply at several metered locations along Waterbury transmission mains. All metered water access locations are located in Watertown. Watertown adds zero burden or costs to Waterbury with respect to the other parts of the Waterbury waterworks system. Said other parts include but are not limited to: maintenance, repair and replacement of its distribution system; employee costs; administrative and overhead costs; pumping operations within the city; and customer billing. Waterbury and Watertown have always recognized that there is no justification for Watertown to participate in such Waterbury's solely O&M costs.

Watertown has always paid and remains committed to pay, its 7.85% portion to future upgrades to the filtration plant and/or increased storage capacity of the five dams.

The express language of the Legislature, in both the Special Acts and the waterworks statutes command that Watertown water rates be "just and equitable". Waterbury and Watertown have jointly agreed that the just and equitable rate is a bulk rate. This interpretation has been in effect for the entire recorded history of the relationship from 1939 to 2018, a period of 80 years.

Waterbury and Watertown merged in 1939 with a mandatory sale and buy water supply agreement. Watertown, in reliance thereon, did not seek similar legislation and establish its own watershed diversion rights in Litchfield County.

Conclusion

Watertown is certainly not a retail water customer. Watertown does not received retail water service. Watertown has always been a special partner with a protected right to share in the Litchfield County watershed water. Watertown has a protected right to pay a just and equitable water rate that has historically been interpreted by the parties to be a bulk rate. The bulk rate has always been determined taking into account the reasonable cost to Waterbury of providing water to Watertown, i.e. the factors described herein. Waterbury benefits financially from its relationship with Watertown in at least two ways: (1) Waterbury is reimbursed by Watertown for the proportional share of capital and operating costs of Waterbury's water system; and (2) Waterbury enjoys lower unit costs for water used by its retail customers by virtue of the economies of scale afforded by the inclusion of Watertown's usage in the construction and operation of Waterbury's water system.

RE: SEWER

Position of Waterbury

Waterbury for the first time in 70 years considers Watertown the same as a regular retail sewer use customer and rate payer.

Position of Watertown

Watertown is not now and has never been a retail sanitary sewer use customer. Watertown for 70 years has been a wholesale or Bulk customer with respect to sanitary sewer transport and treatment.

Watertown has transported sanitary sewage to Waterbury for treatment since at least 1951 pursuant to a series of Sanitary Sewage contracts. Watertown has always paid a wholesale rate on “Bulk Rate” for sanitary sewage treatment taking into account Watertown Bulk Rate status and the circumstances that Watertown does not use all of the functional components of Waterbury’s Sanitary Sewer System, specifically the most expensive functional component of Waterbury’s sewer system, the sewage collection system (i.e., pipeline network), which is challenged by extensive and expensive deferred maintenance that increases operating costs above what would otherwise be the norm. Watertown does not receive the same services as Waterbury’s retail customers. The Bulk Rate has always been based upon a reasonable approximation of the cost to Waterbury to provide the Sanitary Sewage treatment to Watertown. Watertown has approximately 4,150 municipal sanitary sewer customers. Watertown has its own public sanitary sewage agency and its own central collection system (i.e. pipelines). Watertown operates, maintains, repairs and replaces its own sanitary sewage collection system. Watertown bills its users directly. Watertown does not have a separate sanitary sewer treatment facility. Waterbury is the sole source of sanitary sewer treatment for Watertown. In other words, Waterbury provides Bulk Rate sanitary sewage treatment to Watertown and Watertown through its own sanitary sewer agency collects sanitary sewage from all of its customers, including operating and maintaining its own collection system, system administration and customer billing.

History of Waterbury and Watertown Sanitary Sewer Treatment Relationship

1. OAKVILLE FIRE DISTRICT (WATERTOWN)

The Oakville Fire District (“Oakville District”) was established pursuant to a Special Act of the Connecticut Legislature on October 13, 1910. The Oakville District Charter was amended by a series of Special Acts between 1923 with the latest Amendment approved July 15, 1953. The Oakville District included substantial territory within the Town of Watertown known as the Oakville section. The Oakville District Charter authorized the establishment of a sanitary sewage collection system including sanitary sewage treatment. The Oakville District did not build a sanitary sewage treatment facility because of its 70-year relationship transporting its sanitary sewage to Waterbury for treatment.

1951 AGREEMENT

On August 21, 1951 the Oakville District entered into a written Agreement to transport and treat Watertown’s sanitary sewage upon completion of Waterbury’s first sanitary sewage treatment facility.

At the time of the 1951 Agreement, Waterbury owned and maintained a sanitary sewer trunk line somewhat southerly of the Oakville District. The 1951 Agreement provided that the Oakville District would pay 50% of the cost to construct an interceptor or trunk line extension to the Oakville District sewage meter chamber to be located near the Junction of Turkey Brook and Steeles’ Brook (“Steeles’ Brook Interceptor”).

Waterbury and the Oakville District equally and jointly funded the sanitary sewer meter chamber described above.

The 1951 Agreement also provided that a substantial territory of Waterbury, including industrial and residential properties would use Steeles’ Brook interceptor due to topography.

The Oakville District began using Steeles' Brook Interceptor as a discharge point for all its sewage as soon as same was completed. All Oakville District sanitary sewage was metered at the above described meter chamber, now called Matoon Road Meter Station. All Oakville District sanitary sewage was thereby transported to and treated at the then newly constructed Waterbury Treatment Facility.

The 1951 Agreement provided that the Oakville District would pay a "Bulk Rate" for sanitary sewage transport and treatment based upon a fixed rate for each million gallons.

Specifically said "Bulk Rate" was established as follows:

"7. It is also agreed that the Oakville Fire District shall pay the City for all sewage it discharges into the sewerage system of the City, as follows:

1. Until the City disposes of its sewage by treatment, payment shall be at the rate of Thirteen Dollars and Thirty-three Cents (\$13.33) per million gallons.
2. When the City disposes of its sewage by treatment, payment shall be at the rate of Forty-five (\$45.00) Dollars per million gallons.
3. At five-year intervals starting with 1955 the City shall revise the above rates to conform with actual costs of operating and maintaining its sewage treatment plant.
4. The City's costs per million gallons shall include the following:
 - (a.) Interest on and amortization of the cost of existing trunk and intercepting sewers used for conveying the sewage of Oakville Fire District.
 - (b.) Interest on and amortization of the cost of the Sewage Treatment Plant.
 - (c.) Annual cost of maintenance and operation of said Sewage Treatment Plant."

Waterbury and Watertown continued this 1951 Agreement substantially unchanged until 1988 a period of 38 years. The 1951 Agreement excluded from Watertown's bulk rate the operating and capital costs of Waterbury's sewage collection system.

Pursuant to a Special Act of the Connecticut Legislature in 1969 (House Bill 5255) Watertown consolidated the Oakville District into a Department of Watertown. The Oakville District ceased to exist. Watertown assumed all liabilities and assets of the Oakville District including the 1951 Agreement. Again, the sanitary sewage relationship remained unchanged until 1988 with respect to the Bulk Rate Watertown paid for its sanitary sewage transport and treatment.

1988 AGREEMENT

On June 29, 1988 Waterbury and Watertown signed a new Agreement for transport and treatment of Watertown's sewage ("1988 Agreement"). The 1988 Agreement was for a term of 25 years. The 1988 Agreement provided that all Watertown's Sewage estimated at a maximum of 2.7 Million Gallons per day ("MPG") would be transported to Waterbury and treated at the Waterbury Sewage Facility.

The 1988 Agreement significantly provided that Watertown would pay sewage transport and treatment "Bulk Rates" based upon a proportionate share of Capital Costs (6%) and operating costs at a per million gallons rate proportionate to the total of Waterbury's Operating Costs of its sewage Treatment Facility.

The Operating Costs are defined in the 1988 Agreement as follows:

“Operating Costs: The Operating Costs shall be the actual cost of proper operation and maintenance of the wastewater treatment facility and agreed to collection system components including the main sewer carrier from the Matoon Road metering chamber to the City treatment facility as determined by a cost of service study performed in accordance with accounting standards of the Connecticut Public Utilities Control Authority applicable to Publicly Owned Treatment Works. The accounting firm performing the study shall be acceptable to both the City and the Authority. The cost of each Cost of Service Study shall be divided equally between the parties.”

The 1988 Agreement contains the specific Bulk Rate billing formula for 6% of capital costs and proportionate sewage usage costs as follows:

“1. CAPITAL COSTS:

a.) 6% of all bond principal and interest expenses paid in the preceding fiscal year less Federal and State Grants for the main sewer carrier from the Turkey Brook and Steele Brook (Matoon Road) metering chamber to the City Wastewater Treatment Facility.

b.) 6% of all bond principal and interest expenses paid in the preceding fiscal year less Federal and State Grants for the City Wastewater Treatment Facility in existence on the date this agreement is signed.

c.) 6% of all bond principal and interest expenses paid in the preceding fiscal year less Federal and State Grants, for City and Authority mutually agreed upon capital expansions, replacements or improvements to the treatment works unless a different per centage is required by agreement at that time based upon the ratio of benefit of the expansion.

The existing capital costs and duration of payments are as follows and shall form the basis of payment for past due bills due up to the time of the signing of this agreement unless mutual agreement to the contrary is reached, reduced to writing and appended hereto:

Main Carrier

6% of book cost of \$1,500,000 \$90,000.00

(Bond retires 1/1/1990)

Treatment Plant

6% of plant cost

Original Plant \$1,120,000

15% New Plant 1,749,000 (City's Share)

\$2,869,000

6% x 2,869,000 \$172,140.00

(Bond retires 8/15/1997)

2. Operating Costs

Det. Annually

The total of the operating costs as previously defined divided by the total annual flow shall be the Cost/Million Gallons.

The total annual flow from the Authority during the same period shall be divided by the total annual flow received at the treatment facility to determine the pro rata share of costs to be borne by the Authority for the operating expense portion of its bill.

“Operating costs shall be based on the previous fiscal years operating costs plus amortization of any additional minor capital expenditures related to the treatment works with the exception of the currently outstanding charges which might cover a period exceeding one year. The existing operating costs applicable to all currently outstanding bills due and owing under this agreement shall include the operating budgets and the fringe benefits paid to the employees identified in those budgets. These bills cover the unpaid or uncredited balance of the 1984 bill plus all monies due and owing for the years 1985, 1986 and 1987 inclusive. It is recognized that the flow year (January 1 through December 31) does not correlate to the fiscal year (July 1 through June 30) as the terms are used herein.”

Significantly the Watertown Sewage Bulk Rate is based upon Watertown’s actual usage of the sewage transport main and the Waterbury Sewage Treatment Facility. This is the only part of the Waterbury Sewage System used by Watertown. Watertown does not use or benefit from any other part of the Waterbury Sewer System. Waterbury from 1951 to 2013 established Bulk Sewage rates as documented in the 1951 Agreement and the 1988 Agreement.

2001 AGREEMENT

CAPITAL COSTS OF WATERBURY SEWER TREATMENT PLANT UPGRADES

During 2000 Waterbury began a major upgrade to its Sewer Treatment Plant (“STP”) pursuant to federal and state mandates. The total STP capital costs approached \$80 Million Dollars.

Waterbury and Watertown entered into the 2001 Agreement to provide that Watertown would pay its share of the Capital Costs of the STP upgrades. Watertown signed a separate Agreement to pay its proportionate share directly to a designated Short-Term Investment Fund Account (“STIF”). The 2001 Agreement is for the 20-year term of the Construction Bonds for the STP upgrades, and the final payment is scheduled for June 2020.

The 2001 Agreement recognizes the 1988 Agreement to remain for all matters covered therein. The 2001 Agreement was a supplemental agreement and covered only the capital costs of the SPT upgrades.

The total design capacity of the STP is 27.05 MGD. Watertown’s Proportionate Share is 2.75 MGD or 10.166% of the total capital costs of the STP upgrades, subject to downward adjustments for portions of the capital costs not allocable to Watertown. Certain Exhibit to said Agreement describe portions of the capital costs not allocable to Watertown.

WATERTOWN'S PROPORIONATE SHARE

"19. Watertown's Proportionate Share: Shall mean a fraction, the numerator of which is Watertown's reserved Average Daily Flow capacity and the denominator of which is the design aggregate Average Daily Flow to the Waterbury STP. Watertown's reserved Average Daily Flow capacity to the STP is 2.75 MGD and the design aggregate Average Daily Flow capacity to the Waterbury STP is 27.05 MGD so that Watertown's Proportionate Share is 2.75/27.05 or 10.166%, subject to the following adjustment. As depicted on Exhibit IV, some Project CWF-201 costs are not allocable to Watertown. Watertown's Proportionate Share shall reflect an adjustment for such non-allocable Project CWF-201 costs."

It is significant that Waterbury and Watertown contracted that Watertown would pay its proportionate share of the STP upgrade capital costs based upon actual design reserve capacity.

WATERTOWN FIRE DISTRICT

The Watertown Fire District obtained a Special Act Charter from the Connecticut Legislature on May 22, 1913. This Special Act was amended through a series of Special Acts approved on March 20, 1917, June 24, 1921, May 16, 1923, June 22, 1927, and April 05, 1933. Said Special Acts authorized the Watertown Fire District to establish a sewage collection system and sewage treatment facility. The Watertown Fire District territory includes approximately 2000 acres within the center portion of Watertown. The Watertown Fire District has approximately 2,300 sanitary sewer customers.

During 1926 the Watertown Fire District constructed a sewer treatment plant adjacent to Steele Brook and began laying sewers to convey sewage to this facility.

As part of the Connecticut Department of Environmental Protection ("DEP") promoting the Waterbury STP upgrades DEP set a design capacity for Watertown to include the Fire District sewage. DEP forced the Fire District to close its Sewer Treatment Facility and discharge into the Watertown System and in turn to the Waterbury Treatment Plant. During October of 2000 the Fire District decommissioned its Sewer Treatment Facility and since that date discharged into the Watertown sewage system.

There are a number of agreements between Watertown and the Watertown Fire District concerning the present arrangement for Fire District sewage to be combined with Watertown sewage for transport to Waterbury and treatment at the Waterbury STP.

1976 AGREEMENT

On November 10, 1976 Watertown, the Watertown Fire District, and DEP held a joint meeting to discuss a DEP grant to upgrade the Watertown sewer trunk line to Waterbury. The meeting discussed the possibility of Fire District expansion of its sewer system beyond its territory and more importantly the possibility that at some future date the Watertown Fire District would

close its Sewer Treatment Facility and discharge its sewage to the Watertown system. Again, the DEP had a long-term goal to close smaller sewer plants and develop larger regional sewer treatment plants such as the Waterbury STP.

On November 18, 1976 Watertown and the Watertown Fire District entered into an Agreement (1976 Agreement). This 1976 Agreement provided that Watertown would accept the Fire District sewage and transport same to Waterbury for treatment. The cost to the Fire District would be the same "Bulk Rate" Waterbury charged Watertown per million gallons. No date was agreed to implement this contract. However, a physical connection was constructed from the Fire District Sewer Treatment Plant and the Watertown sewer transport line for possible future use.

During 1999 the DEP notified the Watertown Fire District that DEP would not permit the Watertown Fire District to continue to use its Sewer Treatment Plant. Specifically, DEP enhanced the sewage treatment standards and water discharge standards into Steele Brook, to a design standard that could not possibly be met. Essentially, the Watertown Fire District was ordered to close its Sewer Treatment Plant. During October 2000 the Watertown Fire District connection to Watertown as described and contemplated hereinabove, was used. The Fire District sewer treatment plant ceased operations. Accordingly, from October 2000 to the present the Watertown Fire District sewage is combined with Watertown for transport and treatment at the Waterbury STP.

2002 AGREEMENT

On July 09, 2002 Watertown and the Watertown Fire District signed a contract to formalize that Watertown Fire District Sewage would be combined with Watertown Sewage and thereby use part of the 2.75 MGD reserved for Watertown in the 2001 Agreement. Watertown negotiated said Agreement knowing that the Fire District capacity would be included.

This 2002 Agreement provided that the Watertown capacity in the Waterbury Sewer Treatment Facility would be divided based on actual usage between Watertown 67.28% and the Watertown Fire District 32.72%. This Agreement covered Watertown's share of the Capital Costs of the STP upgrades described in the 2001 Agreement.

Watertown continues to include the Watertown Fire District sewage for transport and treatment by Waterbury. The Fire District pays Watertown for its proportionate share of all Waterbury sewage charges. There is no formal agreement between Watertown and the Watertown Fire District with respect to the operation and maintenance charges. Notwithstanding, the Watertown Fire District has a substantial interest in the present rate dispute court case.

The Watertown Fire District paid 32.79% of Watertown's Capital Costs for the Waterbury STP. The Watertown Fire District continues to pay its proportionate share of the total sewer use charges by Waterbury for Watertown's transport and treatment of sewage at the Waterbury STP.

It is significant that in every agreement and past practice between Watertown and the Watertown Fire District the cost of rates are established based upon the reasonable cost of providing the service and the cost is a "Bulk Rate" per million of gallons.

2013 AGREEMENT

On June 27, 2013 Watertown and Waterbury entered into a five (5) year agreement for sewer transport and treatment. This 2013 Agreement provided for payments of future capital costs related to its STP upgrades based on Watertown's reserved capacity. This is combined from the 1988 Agreements and the 2001 Agreement.

The 2013 Agreement again recognizes and continues a "Bulk Rate" for Operation and Maintenance ("O&M") costs but eliminates any reference to Waterbury's actual costs of providing sewer transport and treatment as part of the sewer bill computation.

At the end of the five (5) year term of the 2013 Agreement Waterbury requested that Watertown and the Watertown Fire District pay a outrageous increase of more than 300% above the sewer rate in the 2013 Agreement. The bulk rate imposed by Waterbury on Watertown was not based on or calculated using any methodology generally adopted or approved by any industry or professional association (such as the Water Environment Federation or the American Water Works Association) nor those ratemaking practices used by the Connecticut Public Utilities Regulatory Authority. Watertown continued to pay at the prior Bulk Rate based upon the 2013 Agreement and past practice. Waterbury refused to negotiate in good faith, taking into account the 70-year history of Watertown paying sewer Bulk Rates taking into account the approximate cost to Waterbury to transport and treat Watertown sewage and other provisions of Connecticut Law.

CONNECTICUT GENERAL STATUTES

C.G.S Section 7-272 provides that any two or more municipalities may enter into contracts to jointly use a sewage transport and treatment system.

"Sec. 7-272. Joint operation of sewerage system. Any two or more municipalities may enter into and revise from time to time, and may fulfill, contracts jointly to acquire, construct or operate all or any part of a sewerage system. Any such agreement shall particularize (a) the portion or portions of the sewerage system to be jointly acquired, constructed or operated, (b) the acts relating to acquiring, constructing or operating such portion or portions of the sewerage system to be performed jointly by the municipalities and (c) the method of apportioning the cost thereof. Whenever any two or more municipalities have entered into such an agreement, the sewer authorities of such municipalities jointly shall have, for the portion or portions of the sewerage system and for the acts relating to acquisition, construction or operation of the sewerage system covered by the agreement, all of the authority conferred by this chapter on a municipality and each such municipality shall continue to have all other authority conferred by this chapter."

The statute also provides that each municipality shall have its own Water Pollution Control Authority to govern and manage its own separate portions of a sewer system. In this case, Watertown has its own Water and Sewer Authority ("Authority"). The Authority operates and manages the approximately 4,150 sewer customers within the Town of Watertown. This includes maintenance, repair, replacement, and extensions of all sewer mains pumping stations, and collections systems within Watertown. This also includes administration and billing of Watertown's sewer users. The Authority exercises all of the powers contained in the General Statutes with respect to operation of a municipal sewer systems. **C.G.S Chapter 103 Municipal Sewer Systems.**

The Watertown Fire District also is a separate municipality within the scope of the Statute. The Watertown Fire District also operates its own sewer system. This includes maintenance, repair, replacement, and extensions of all sewer mains, pumping stations, and collection systems within the Watertown Fire District. This also includes administration and billing of Watertown Fire District sewer users. The Watertown Fire District exercises all of the powers contained in General Statutes with respect to operation of a municipal sewer system. **C.G.S Chapter 103 Municipal Sewer Systems.**

C.G.S Section 7-273 provides that a municipality may contract with an adjoining Town for connection with and use of a sewer system.

"Sec. 7-273. Contract for use of sewerage system. Any town, city, borough or fire or sewer district, maintaining a sewerage system, may contract with any adjoining town or property owner therein for connection with and the use of such sewerage system."

Said statutory provisions do not authorize a host municipality to treat the customers of an adjacent sewer Authority as retail sewer customers of its own for rate purposes.

On this Record, Waterbury is seeking to treat Watertown's 4,150 sewer customers and the Watertown Fire Districts 2,250 sewer customers the same as a Waterbury retail sewer ratepayer in violation of pertinent Connecticut statutes, contrary to seven (7) years of documented contract "Bulk Rates" and past practices.

Watertown and the Watertown Fire District own and operate their own sewer agencies in accordance with the provisions of Special Acts and the General Statutes. The Connecticut Supreme Court decision of *Pepin v. Danbury* is also pertinent. In this case, Danbury added 7.5% of the total cost of each sewer bill to be added to each sewer bill and then diverted same to the general tax fund. The Trial Court and our Supreme Court concluded that the general tax component of the sewer bill is in violation of pertinent statutes because it is in excess of the cost needed to operate the sewer system. In other words, the Court ruled that a municipal sewer agency cannot charge for sewer services greater than the cost of providing the service. A municipality cannot

supplement general tax revenue by arbitrarily inflating cost for sewer treatment to an adjoining municipality.

SUMMARY AND CONCLUSION

Watertown and Waterbury have a 70-year relationship during which Waterbury has always charged Watertown a Bulk Rate taking into account Watertown's reserved capacity at the STP for capital costs and taking into account Waterbury's cost to provide sewer transport and treatment for O&M costs. For the first time in 2018 Waterbury is seeking to treat Watertown as 4,150 individual or separate retail sewer customers for rate purposes. Waterbury is seeking to treat the Watertown Fire District as 2,150 individual or separate retail sewer customers for rate purposes.

Watertown and the Watertown Fire District are separate municipal sewer agencies existing pursuant to Special Acts and the General Statutes. Said statutes do not authorize Waterbury to seek any profit (in this case an outrageous profit) for sharing its STP.

On this Record the Connecticut DEP by way of generous grants and low (2%) interest rate loans, funded the upgrades to Waterbury's STP. In addition, the DEP forced the Watertown Fire District to close its Sewer Treatment Plant and join Watertown in using the Waterbury STP. At the time the Waterbury STP was upgraded to become a regional STP, it was never authorized to arbitrarily inflate costs to adjoining municipalities that were in effect mandated to contract for sewer treatment.

2018 Water and Sewer Rates

Beginning in 2018, Waterbury for the first time decided to bill Watertown (79 years WATER) (67 years SEWER) the same retail rate charged to Waterbury residents. This equated to more than double water rates and more than triple sewer rates. Waterbury refused any good faith negotiations on a different rate. Waterbury repudiated the historical practice of billing water and sewer based on the cost of providing water and sewer service.

POSITION OF THE TOWN OF WATERTOWN

As we all know, Waterbury sued Watertown seeking to enforce the 2018 water and sewer rates. The position of Watertown may be summarized as follows:

Why should Watertown not pay the same as Waterbury?

Waterbury does not own any water source within its geographic territory. The water is drawn from Litchfield County pursuant to a series of special acts of the Connecticut Legislature; and with respect to the Shepaug Watershed, a contract between Waterbury and the Town of Washington. The Washington contract expressly provides that the water is to be shared with Watertown. The Legislature Acts provide that the water is to be shared with the Towns where the water source is located or through which the

transmission lines are located (Watertown). The statutes mandate that rates shall be “just and equitable”. For 78 years, water rates included the wholesale rate of “cost of service rate”. NO cost of operating the Waterbury residential water system was included. Both Waterbury and Watertown paid to operate their own respective water distribution systems. Watertown was expected to pay a retail rate which means the same rate as Waterbury customers, i.e. support the Waterbury distribution system and then pay for the Watertown distribution system.

Again, Watertown obtains its water supply from a transmission main (meter pit) before any water gets to Waterbury. Not one gallon of water used by Watertown touches the Waterbury customer distribution system.

Why should Watertown not pay the same sewer rates as Waterbury residents?

The Watertown position on the increase of sewer charges is similar. Watertown paid its full proportionate share of the sewage transmission main to the treatment plant. Watertown paid its full proportionate share of the Sewer Treatment Plant. Watertown has always paid its cost base rate for sewer treatment. Watertown sewage does not touch any portion of the Waterbury sewer collection system. Watertown was expected to pay the same rates as Waterbury customers, i.e. subsidize in part of the Waterbury sewer collection system, and then pay for the Watertown collection system.

Why should Watertown not pay the same rates as the other municipalities – Middlebury, Cheshire, Wolcott?

Watertown is the only municipal use of the water that is located in Litchfield County, the source of the water. The Legislature Special Acts and the Washington Contract expressly provide that Watertown is intended as a user of the water. Watertown takes water directly from a transmission main before water enters the Waterbury distribution system. Waterbury has been the sole source for Watertown’s water since 1939 and probably earlier.

The other municipalities, Middlebury, Cheshire and Wolcott purchase only small amounts of water to supplement other water sources: Have only relatively recently begun using this water supply; The water supply uses a significant portion of the Waterbury distribution system. In addition, Watertown paid its proportionate share of 7.85% to build the 83-million-dollar filtration plant which incidentally is located in Watertown.

What does “just and equitable” mean in the context of setting water rates?

For 79 years, Waterbury and Watertown agreed that “just and equitable rates” were equal to the wholesale rate, leased entirely on the cost basis. This means the cost to Waterbury to deliver water to the meter put at Route 63 and Route 73, sometimes called the “carvel meter pit”. This cost expressly included all costs of the Waterbury distribution and administration of its rental customer base. In 2018, Waterbury decided that this so-

called just and equitable rate should be more than double for water and more than triple for sewer.

Why did Watertown not negotiate a new contract with Waterbury to avoid a court case?

I believe Watertown proposed negotiations and was told Waterbury would not compromise. I attended two mediation sessions. Waterbury showed little to no interest in good-faith negotiations.

Why did the Water and Sewer Authority contest the proposed increase in water and sewer rates?

I believe the Water and Sewer Authority contested the water and sewer rates to protect the rate payers from the double and triple rates proposed. The rates proposed are equal to some rates paid by Waterbury residents. This means every future increase in rates impacts Watertown ratepayers and moves further from "just and equitable rates".

This is the decision faced by the Water and Sewer Authority and Town Council.

Based upon the information contained in this Report and the extent of all information, it is my opinion the Water and Sewer Authority and the Town Council made the correct decisions for the best interests of the ratepayers.

It is more than unfortunate that the courts have not appreciated or credited Watertown's position. This fact is not in any way the fault of the Town Council.

The most significant fact beyond dispute: It does not cost Waterbury one dollar more to provide water to Watertown and treat sewage from Watertown than it did based on the 2013 contracts. Waterbury also financially benefited from Watertown's water purchase and sewer treatments without any increase after 2013.

Statement

This Report has been prepared by Franklin G. Pilicy acting as a private citizen. I have not been asked to prepare this Report by any Town Official or any other party. I have prepared this Report because there is a lack of information and/or misinformation concerning this important issue. There has been criticism of the Town Council, the Water and Sewer Authority and the Town Manager. In my opinion, this criticism is not justified. The decision to contest the increases in water and sewer rates was a prudent and reasonable decision based upon all of the background information available at the time when Waterbury increased the rates.