

RHODE ISLAND LAWYERS WEEKLY

'Customary practices' validate power plant water deal

By: Barry Bridges ◉ April 24, 2019

An agreement under which the town of Johnston would re-sell some of the water it draws from the Scituate Reservoir to supply the steam turbines at a proposed \$1 billion power plant in Burrillville has received a green light from a Superior Court judge.

Judge Michael A. Silverstein found that if the arrangement comes to fruition it will be consistent with practices already in place in Rhode Island municipalities.

The deal was challenged by the Conservation Law Foundation and the town of Burrillville, which both sought a declaratory judgment that the agreement is invalid under Rhode Island law.

At issue was whether a 1915 state statute that allows some municipalities to purchase water from the Providence Water Supply Board at wholesale prices to use for "ordinary municipal water supply purposes" would encompass the sale of water to a power plant located in another town.

Answering that question in the affirmative, Silverstein, who retired last year but is still presiding over some matters, granted summary judgment in favor of the defendant power plant developer and the town of Johnston.

Finding the subject phrase ambiguous, the judge turned to legislative intent as the guide to determine the law's proper construction. He noted that courts may look to prevailing doctrine and common practices when determining the intent underlying ambiguous statutes.

Critically, Silverstein was persuaded by the parties' discovery revealing that municipalities subject to the 1915 law do not have restrictions placed on their use or sale of the water they purchase. He wrote that "every major energy facility in the state obtains its water from a municipality or municipal water district."

Among several examples, he pointed out that Johnston is home to a power plant that obtains a large portion of its cooling water pursuant to an effluent supply contract with the city of Cranston.

"Having determined that it is customary for municipalities to purchase water from PWSB and resell it to energy generation facilities, the court finds that the [agreement] constitutes an ordinary municipal water supply purpose under [the statute] and is therefore valid under Rhode Island law," he concluded.

The 28-page decision is *Conservation Law Foundation, Inc. v. Clear River Energy, LLC, et al.*, Lawyers Weekly No. 61-027-19. The full text of the ruling can be found [here](#).

Issue: APRIL 29 2019 ISSUE

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