

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 10-217

TIOGA RIVER WATER COMPANY, INC.

Petition for Increase in Permanent Rates

Order Approving Settlement Agreement

ORDER NO. 25,322

January 30, 2012

APPEARANCES: Stephen P. Ct. Cyr & Associates by Stephen P. St. Cyr on behalf of Tioga River Water Company, Inc.; Tioga Drive Homeowners by George Woodruff; and Alexander F. Speidel, Esq. on behalf of the Staff of the Public Utilities Commission.

I. BACKGROUND

Tioga River Water Company, Inc. (the Company) is a New Hampshire public utility as defined in RSA 362:2 and 362:4, and operates two separate water divisions. The Tioga Division (Tioga) located in Belmont, New Hampshire serves approximately 22 customers, while the Gilford Village Water District Division (Gilford Village serves approximately 38 customers in Gilford, New Hampshire.

On August 16, 2010, the Company filed a Notice of Intent to File Rate Schedules and, on October 15, 2010, filed a request for increased rates for both Tioga and Gilford Village along with revised tariff pages and supporting documentation. The Company proposed an increase in Tioga's revenues of \$13,335 or 127.12%, and an increase in Gilford Village's revenues of \$19,295 or 147.05%, both to be effective on January 1, 2011.

On November 15, 2010, the Commission issued Order No. 25,169 suspending the proposed tariffs and scheduling a prehearing conference and technical session for December 14,

2010. The Commission conducted the prehearing conference as noticed. A group of Tioga customers (Tioga Homeowners) filed a request for intervention, which was unopposed. During the technical session, the Company, Staff, and Tioga Homeowners agreed to a procedural schedule, which we approved by secretarial letter on December 28, 2010. A number of subsequent modifications to the procedural schedule were requested by Staff, and approved by secretarial letters, to enable the Company to resolve certain outstanding compliance issues related to its recordkeeping for fixed plant. Staff noted in a letter filed on July 7, 2011 that the Company was now in compliance regarding recordkeeping.

Staff and the Tioga Homeowners conducted discovery and, on August 18, 2011, the parties and Staff met to discuss a potential settlement of this case. The discussions ultimately produced a Settlement Agreement between the Company and Staff, filed with the Commission on September 22, 2011. The Tioga Homeowners did not join the Settlement Agreement.

On October 6, 2011, the Commission heard the Company's and Staff's testimony in support of the Settlement Agreement, and the Tioga Homeowners' statements in opposition. At the hearing, Staff agreed to provide the Commission with a report (Final Staff Report) on: (1) certain plant additions placed into service by the Company during 2010 which are the basis for Step Increases for both Tioga and Gilford Village; (2) final documentation supplied by the Company relative to a loan which financed the Company's 2010 construction projects; and (3) the Commission Audit Staff's Final Audit Report on the 2010 plant additions. On December 20, 2011, after receiving pertinent information from the Company, Staff filed the Final Staff Report, incorporating revised revenue requirements and resulting customer rates, and Staff recommended

approval of these revised rates. The Company indicated its concurrence with Staff's recommendation of December 20, 2011.

II. SUMMARY OF SETTLEMENT AGREEMENT TERMS

A. Revenue Requirement (With Final Staff Report Revisions)

The Company and Staff agreed upon annual revenue requirements of \$20,719 for Tioga and \$26,739 for Gilford Village. The Final Staff Report-related adjustments were a \$50 reduction and \$47 reduction in the revenue requirements for Tioga and Gilford Village, respectively. The result is a 97.51% increase in test year revenues for Tioga and a 110.18% increase in test year revenues for Gilford Village.

The revenue requirements for each division are composed of a Permanent Increase component and a Step Increase component. In deriving the permanent rate components for each division, the Company and Staff agreed upon the following: test year rate base amounts of \$27,058 for Tioga and \$38,759 for Gilford Village; a rate of return of 6.00% for Tioga and 7.77% for Gilford Village; adjusted test year operating expenses of \$11,200 for Tioga and \$18,022 for Gilford Village; and a \$0 income tax effect for each division.

For each division, the Company and Staff have agreed to incorporate increases in rate base related to new plant funded by a State Revolving Fund (SRF) loan administered by the New Hampshire Department of Environmental Services (NHDES), previously considered by the Commission and approved in Docket No. DW 09-117 in Order No. 24,988 (July 23, 2009). SRF loan balances for both Tioga and Gilford Village, with a combined Tioga-Gilford Village total of \$230,000, have been approved for loan forgiveness grants of 50% of the loan balance by NHDES, thereby reducing the overall SRF-related increases in rate base.

The Company and Staff agree that the SRF-funded new plant in service will increase Tioga's rate base by \$69,699. The rate of return to be applied to the additional Tioga rate base is 3.221%, which is based on the total annual cost of debt related to Tioga's SRF-related borrowings. For Gilford Village, the Company and Staff agree that the SRF-funded new plant will increase the rate base by \$51,784, with an applied rate of return, based on the annual cost of Gilford Village's SRF-related debt, of 3.188%. It is also anticipated that the respective 2010 plant additions will further increase the annual operating expenses for Tioga by \$5,652 and for Gilford Village by \$4,054.

B. Rate Design and Bill Impacts

1. Tioga

For Tioga, with incorporation of the Final Staff Report-related adjustments, the Company and Staff agree upon a fixed quarterly charge of \$60.00 per billable unit (\$240.00 annually) and a consumption charge of \$0.1177 per cubic foot of water used. An average single-unit residential customer of Tioga using approximately 5,963 cubic feet of water annually¹ will pay \$942 per year under proposed rates, compared to a present annual charge of \$473 under current rates, an approximate 99.21% increase.

2. GILFORD VILLAGE

For Gilford Village, with incorporation of the Final Staff Report-related adjustments, the Company and Staff agree upon a fixed quarterly charge of \$35.97 per billable unit (\$143.88 annually) and a consumption charge of \$0.0409 per cubic foot of water used. An average single-unit residential customer of Gilford Village using approximately 3,907 cubic feet of water

¹ This annual usage figure is derived from actual Tioga water use history.

annually² will pay \$304 per year under proposed rates, compared to a present annual charge of \$143 under current rates, an approximate 112.74% increase.

C. Effective Date

The Company and Staff agree that the stipulated revenue requirements for both the Tioga Division and the Gilford Village Division should become effective on a service rendered basis on or after October 1, 2011.

D. Loans from Company Affiliate and Shareholder

During 2010, the Company borrowed \$3,580 from its affiliate, Gilford Well Company, to finance engineering work associated with the construction of Tioga's new pump station completed in 2010. The Company and Staff agree that this loan should be repaid in monthly installments of principal and interest over a term of twenty years. The Company and Staff also agree that the interest rate of the loan should be based on the historical average annual majority prime rate charged by banks on short-term business loans plus 1.33% and adjusted every five years. Therefore, the initial interest rate of this loan will be 4.58% (the sum of 3.25% + 1.33%). The revenue impact of this financing is reflected in Tioga's step increase discussed within the Settlement Agreement. The Company and Staff also agree that the Company will file an executed copy of this note with the Commission within thirty days of a Commission order approving the Settlement Agreement.

The Company's filing also included a request for approval of three loans to Gilford Village. Each such financing occurred in a prior year, however, and the Company did not file for Commission approval of these loans pursuant to RSA 369. In 2006, the Company borrowed

² This annual usage figure is derived from actual Gilford Village water use history.

\$12,810 from its affiliate, Gilford Well Company. The funds were used for the replacement of pumping equipment and meters as well as to meet operating expenses. In 2007, the Company borrowed \$11,928 from its shareholder, Norman Harris, Jr. The proceeds from this borrowing were used for the replacement of pumping equipment and to meet operating expenses. In 2008, the Company borrowed an additional \$8,429 from Norman Harris, Jr. for the replacement of tanks and pumping equipment as well as to meet operating expenses of Gilford Village.

The Company and Staff agree that each loan should be repaid in monthly installments of principal and interest over a term of twenty years. With regard to the interest rates associated with each loan, the Company and Staff agree that each should be based on the historical average annual majority prime rate charged by banks on short-term business loans plus 1.33% and adjusted every five years. Therefore, the initial interest rates on these loans are as follows: for the 2006 loan the interest rate is 9.29% (the sum of 7.96% + 1.33%); for the 2007 loan the interest rate is 9.38% (the sum of 8.05% + 1.33%); for the 2008 loan the interest rate is 6.42% (the sum of 5.09% + 1.33%). The Company and Staff agree that it is just and reasonable for the Company to undertake these loans and recommend that the three prior year financings be approved. The revenue impact of these financings is reflected in Gilford Village's permanent increase discussed in the Settlement Agreement. The Company and Staff also agree that the Company will file executed copies of each note with the Commission within thirty days of a Commission order approving this Settlement Agreement.

E. Plant Records

The Company and Staff agree that the Company will maintain and continually update its system of continuing property records as well as its work order system in accordance with the

Commission's Uniform System of Accounts. The Company and Staff also agree that the schedule attachments to the Settlement Agreement will serve as the baseline for the Company's future accounting for its fixed plant, accumulated depreciation and depreciation expense beginning with the fiscal year ended October 31, 2010. The Staff and Company agree that any prior period adjustments that may be necessary in order to bring the Company's fixed plant and accumulated depreciation balances into conformity with these schedules should be reflected in the Company's annual report to the Commission for the fiscal year ended October 31, 2011.

F. Plant Improvements – Tioga Division

The Company and Staff agreed that the Company would install, and have operational, by October 6, 2011, an auto-dialer machine in the Belmont pump station to notify the Company directly of any system alarms. (Staff has confirmed the compliance of the Company with this agreement, through the installation of an auto-dialer). See Transcript of October 6, 2001 Public Hearing (Tr.) at 35.

G. Rate Case Expenses

The Company and Staff agree that the Company ought to be entitled to recover its reasonable and prudently-incurred rate case expenses in this proceeding. The Company will submit to the Commission Staff its request for rate case expenses, as well as supporting documentation for the recovery of rate case expenses for Staff's review. The Company and Staff intend to provide a joint recommendation to the Commission. If the settling parties are unable to provide a joint recommendation, the Company and Staff will each provide a separate recommendation to the Commission for its review.

III. POSITION OF TIOGA HOMEOWNERS

The Tioga Homeowners oppose the Settlement Agreement, as expressed by their representatives at the October 6, 2011 public hearing. Tr. at 68-71. Specifically, the Tioga Homeowners objected to the level of percentage increases in rates for Tioga, and the level of fixed charges, which were viewed as a significant economic burden by the Tioga Homeowners. Tr. at 68-71.

IV. COMMISSION ANALYSIS

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. The Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise “as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.” *Concord Electric Co.*, Order No. 24,046, 87 NH PUC 595, 605 (2002) (quoting *Granite State Electric Co.*, Order No. 23,966, 87 NH PUC 302, 306 (2002)). Notwithstanding a settlement among the parties, we must still independently determine whether the settlement results comport with applicable standards. *Id.*

N.H. Code Admin. Rules Puc 203.20(b) requires us to determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest. The Commission is authorized to fix rates after notice and hearing pursuant to RSA 378:7 and is obligated to investigate the justness and reasonableness of the proposed rate. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). Additionally, in

circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8.

To this end, we have considered the proposed Settlement Agreement as well as the supporting testimony provided at the hearing and we find that the terms of the Settlement Agreement are consistent with the public interest. The Settlement Agreement contains agreed upon adjustments to rate base, revenues, and expenses. Staff has audited the plant additions, and corroborates that they are used and useful in the provision of utility services. These plant additions and improvements are necessary for the maintenance of reliable water service by the Company to its customers. The reasonable costs of the Company thereby require the increases proposed for Tioga and Gilford Village. Having reviewed the proposed revenue requirement and its components, we find that the revenue requirement presented by the settling parties in the Settlement Agreement is just and reasonable and represents a reasonable compromise of the issues. Further, we find that the rate base used to calculate the revenue requirement is prudent, used, and useful in accordance with RSA 378:28. We also accept and approve the Settlement Agreement's stipulations for rate design, and given that the proposed rates are also based on a revenue requirement that we found to be just and reasonable and on a rate base that was audited and is prudent, used, and useful, we find the proposed rates to be just and reasonable in accordance with RSA 378:28.

We admonish the Company to seek advance approval of future loan undertakings, as required by RSA 369. Nonetheless, we recognize that the loans for which the Company seeks retroactive approval, with Staff's support, were critical to Gilford Village operations and system reliability. We find the agreed-upon interest rates based on the historical average annual

majority prime rate charged by banks on short-term business loans plus 1.33% and adjusted every five years to be just and reasonable and we will approve these loans, with the Settlement Agreement's proviso that executed copies of loan documents will be submitted to the Commission within thirty days of this order. We support the Settlement Agreement's stipulation for the filing of reasonable rate case expenses with the Commission, and we will review those expenses when filed. We also approve of the Settlement Agreement's requirement of enhanced efforts by the Company in its maintenance of plant records, and expect that these improvements will be reflected in the latest annual report by the Company.

With regard to the opposition expressed by the Tioga Homeowners, we recognize that the increase in Tioga rates pose an economic burden. At the same time, we recognize that Staff and the Company have made every effort to design a Settlement Agreement that mitigates the rate impact on Tioga ratepayers but recognizes that the Company is legally entitled to recover its investment in critically-needed infrastructure. Because there are so few customers in Tioga, the rate impact for these improvements is far greater than in Gilford Village. Investments in both systems were required, and in both cases they were undertaken in a prudent manner, notably through the SRF loan program that provides forgiveness of 50% of the loan amount.

Based upon our review of the record and testimony at hearing, we have concluded that the Settlement Agreement and the rates established therein are just and reasonable. We find that the terms of the Settlement Agreement will benefit customers of the Company, especially from the perspective of service quality and reliability, and that the Settlement Agreement is in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement reached between Tioga River Water Company, Inc. and Staff is APPROVED; and it is

FURTHER ORDERED, that Tioga River Water Company, Inc. shall submit reports to the Commission, or Commission Staff, as identified in the Settlement Agreement as specified above, including a filing of the report on rate case expenses by the Company to the Commission; and it is

FURTHER ORDERED, that the loans made to the Company by its Affiliate and Shareholder for Tioga and Gilford Village capital improvements are APPROVED, pursuant to the terms outlined in the Settlement Agreement, and that all notes for these loans described herein shall be filed by the Company within thirty days of the date of this Order; and it is

FURTHER ORDERED, that Tioga River Water Company, Inc. shall submit a compliance tariff within ten days in conformance with this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 2012.

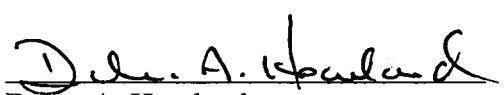


Thomas B. Getz
Chairman



Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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