

DW 05-063

HAMPSTEAD AREA WATER COMPANY, INC.

Petition for Order to Expand Franchise, Acquire Assets, Incur Debt and Charge Rates

Order Approving Stipulation

ORDER NO. 24,544

November 18, 2005

APPEARANCES: Robert C. Levine, Esq. for Hampstead Area Water Company; and Marcia A.B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

Hampstead Area Water Company (HAWC) is a public water utility with approximately 2500 customers located throughout southeastern New Hampshire. On March 30, 2005, HAWC filed a petition including supporting testimony and attachments with the New Hampshire Public Utilities Commission (Commission) requesting approval to: 1) expand its franchise area within the Town of Sandown; 2) construct and operate a well inside that area; 3) issue long-term debt; 4) purchase water system assets; and 5) charge permanent rates for the water system serving thirty-eight (38) residential units in a cluster development in the Town of Sandown known as Mill Woods Cluster Subdivision (Mill Woods).

On May 17, 2005, the Commission issued an Order of Notice setting a Prehearing Conference and technical session for June 16, 2005. On June 8, 2005, Leslie and Joan Roy, customers of HAWC, filed a Motion to Intervene. The Commission granted the Roys' intervention request at the Prehearing Conference.

On June 21, 2005, Staff filed with the Commission an agreed upon procedural schedule for Commission consideration. The Commission approved the procedural schedule by a Secretarial Letter dated June 24, 2005.

Staff and the Parties conducted discovery according to the procedural schedule. On September 23, 2005, Staff and the Parties filed a Stipulation agreement and presented the Stipulation to the Commission at hearing on September 29, 2005.

On October 3, 2005, Staff filed exhibit 6, a response to a record request made at hearing for documentation from the Secretary of State's Office concerning Skipper Land Development, LLC. (Skipper Development).

II. TERMS OF STIPULATION

A. Franchise and Purchase Of Assets

Staff and HAWC agreed that it is in the public interest for HAWC to expand its franchise to purchase the assets of Mill Woods.¹ The subject assets were described in Schedule

¹ A certain tract of land situated in Sandown, County of Rockingham, State of New Hampshire containing thirty-five (35) acres, more or less, bounded and described as follows, via:

Beginning at the Southwest corner of said land at a stake and stones at land formerly of George Marston; thence Easterly by said Marston land to the Little Mill Brook or Stream; thence Northerly by said Mill Stream to the fence and land now or formerly of Thomas Eaton; thence Westerly by said Easton land to the road leading from Derry to Exeter; thence across said road by land now or formerly of Horace Adams and a bound hemlock tree to land now or formerly of Gage and Jones; thence Southerly by said Gage and Jones land across said road again; thence Westerly by said road to land formerly of George Marston; thence Southerly by said Marston land to the point of beginning.

There is excepted from the above parcel a certain parcel of land situated in said Sandown and being more particularly bounded and described as follows , via:

Commencing on the Southerly side of the road formerly called Derry-Exeter Road and the Northwesterly corner of the within conveyed premises; thence Southerly by land formerly of George Marston; now of one Leonard, ninety-five (95) feet to the end of a stone wall, thence continuing in the same direction and by said stone wall two hundred five (205) feet; thence Easterly in a straight line on a line generally parallel with said road one hundred eight five (185) feet to a large stone about four (4) feet in diameter; thence Northerly two hundred eighty six (286) feet to said road, said last two courses being by land of said Robert P. True; thence Westerly by said road one hundred fifty-two (152) feet to the point of beginning.

2B of the Stipulation and were set forth according to the Uniform System of Accounts for Water Utilities account numbers. Staff and HAWC agreed that HAWC may accept, as a Contribution in Aid of Construction (CIAC), certain assets of the Mill Woods system as specified in Schedule 2B. At hearing, Staff testified that it determined CIAC according to a methodology approved by this Commission in Docket No. DW 02-128.² Staff explained that in systems acquired by HAWC, where the purchase price is determined by the number of units served times a fixed per unit charge, the difference between that purchase price and the actual cost of construction would be classified as CIAC. CIAC would not be in rate base and thus would not be factored in to rates paid by customers. Hearing Transcript of September 29, 2005 (9/29/05 Tr.) at 17 lines 1-13. The assets characterized as CIAC total \$126,083. Staff emphasized at hearing that this amount is contributed by the developer, Skipper, and not by HAWC. 9/29/05 Tr. at 22 lines 7-9. Staff testified that in its view it is preferable for system ownership to be held by water companies so that the water company has more control over the provision of water to its customers. 9/29/05 Tr. at 20 lines 18-22. Staff and HAWC also agreed that based on the conditional well approval issued by the Department of Environmental Services (DES) and contained in HAWC's filing, that HAWC has met the suitability and availability requirements of RSA 374:22, III. Staff explained at hearing that a DES approval letter contained in HAWC's filing, as Exhibit 11, refers HAWC to the DES Chemical Monitoring Program, which will provide ongoing water quality oversight of HAWC's system.

B. Financing

Staff and HAWC agreed to support HAWC's request for financing of up to \$38,000 from Skipper Development. Staff and HAWC recommend that the interest rate on the loan from Skipper be an adjustable rate of 2.25% above the prime rate published in the *Wall*

² *Hampstead Area Water Company*, Docket No. DW 02-128, Order No. 24,362 (August 19, 2004).

Street Journal on the last business day of each calendar year. As of December 31, 2004, the *Wall Street Journal* published prime rate was 5.25% which would yield an initial interest rate of 7.50%. The loan interest rate shall be adjusted every year on the anniversary date of the loan, using the *Wall Street Journal* prime rate as of the last business day of the prior year plus 2.25%. At hearing, Staff testified that this interest rate is similar to other HAWC financings approved by this Commission and that it is comparable to rates other small water companies have been obtaining. 9/29/05 Tr. at 19 lines 3-8 and at 20 lines 2-5.

C. Permanent Rates

Staff and HAWC agreed to a revenue requirement of \$21,007, based on the following components contained in Exhibit A of the Stipulation:

Rate Base	\$52,335
Rate of Return	7.50%
Operating Income Requirement	\$3,925
Operating Expenses	\$17,082
Revenue Requirement	\$21,007

Staff and HAWC agreed that the following customer rate, using the agreed upon revenue requirement, is just and reasonable:

Annual Base Charge per Customer	\$100
Consumption Rate per 100 cu ft	\$5.31
Estimated annual rate per customer	\$553.00

At hearing, Staff explained that HAWC presently has a rate case, Docket No. DW 05-112, before the Commission and that HAWC has requested consolidated rates. Staff testified that, depending upon whether consolidated rates are approved, the \$553 proposed annual rate may change.

9/29/05 Tr. at 25 lines 8-13.

D. Step Adjustment For Local Property Taxes Not Yet Assessed

Staff and HAWC recognized that HAWC is likely to incur a liability for local property taxes from the Town of Sandown in the near future for the Mill Woods system. HAWC and Staff agree that recovery of a local property tax liability through rates is appropriate. At hearing, Staff testified that if the local property taxes were presently known, they would be included in the present rate case. 9/29/05 Tr. at 27 lines 6-9. HAWC and Staff agreed that HAWC shall be entitled to a step adjustment in rates for the Mill Woods system for property tax expense at the time the liability is imposed by the Town of Sandown. Staff and HAWC agreed that in no case shall HAWC seek a step adjustment for property tax expenses after the passage of 24 months from the date of an order approving the Stipulation. Staff and HAWC agreed that if a rate case is filed by HAWC which includes the Mill Woods system, the consideration of recovery of property taxes will be undertaken in that rate case. If the Town of Sandown has yet to assess a property tax by the conclusion of the rate case, it is the intent of Staff and HAWC to provide for a continuation of HAWC's ability to seek recovery of the local property taxes assessed through a step adjustment in the future.

III. COMMISSION ANALYSIS**A. Franchise**

Pursuant to RSA 374:22, "[n]o person or business entity shall commence business as a public utility within this state...without first having obtained the permission and approval of the commission." The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is in the public good. RSA 374:26. In determining whether a franchise is in the public good, the Commission assesses the financial, managerial and

technical expertise of the petitioner. *See, Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

According to its petition and prefiled testimony, HAWC was approached by developers of the Mill Woods development and asked to provide water service to the development. HAWC and its predecessor, Walnut Ridge, have been operating water systems in New Hampshire for 40 years. *See, Walnut Ridge Water Company, Inc.*, 62 NH PUC 190 (1977). HAWC has previously demonstrated the requisite managerial and technical expertise to operate its various systems and in fact the Commission has recently approved HAWC's request for a new franchise in Docket No. DW 04-055, *Hampstead Area Water Company*, Order No. 24,501, August 22, 2005. We conclude the record warrants a finding that HAWC possesses the requisite financial, managerial and technical expertise to operate this latest franchise expansion area.

Pursuant to RSA 374:22, III, water companies seeking franchise approval must also satisfy the requirements of DES relating to suitability and availability. We note the filing contains documentation of DES approvals. Staff also testified of continued DES oversight of this water system by virtue of the Chemical Monitoring Program. We believe the record before us adequately substantiates that HAWC complies with RSA 374:22, III.

B. Purchase of Assets and Financing

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this State may issue evidences of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." Analysis of the public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates to insure that the public good is protected. *Appeal of Easton*, 125 N.H. 205, 213 (1984). In the instant matter,

HAWC intends to purchase the Mill Woods water system assets from Skipper Development. Pursuant to the Stipulation, the purchase price is determined as the product of 38 customers times \$1,000 per service connection, or \$38,000. This is the amount HAWC proposes to finance. We note that this amount is substantially lower than Skipper Development's actual cost of construction, which is \$164,083. Exh. 1 at 10. As indicated earlier, the difference between the actual cost of construction and the purchase price, \$126,083, is being treated as CIAC. We previously found HAWC's methodology for determining CIAC in Docket No. DW 02-128 to be consistent with the public interest and Staff testified the CIAC in this docket was consistent with Order No. 24,362. Based on the record before us, we agree with Staff and believe the CIAC determination in the instant docket accurately follows the guidelines established in DW 02-128. Lastly, we conclude that utility ownership of physical assets ensures that water utilities will have control over those assets and can thus better provide the safe and adequate water service required by RSA 374:1. For these reasons, we find HAWC's purchase of the utility assets in Mill Woods is consistent with the public good.

We next review the reasonableness of the proposed rate and its impact upon ratepayers. According to the Stipulation, the interest will be calculated based on the prime rate published in the *Wall Street Journal* on the last business day of each calendar year, plus a margin of 2.25%. We have, in the past, approved interest rates for small water companies where the margin has ranged from 1.5 to 2.75% over the index.³ In Docket No. DW 02-198, we approved an interest rate for a HAWC loan with Lewis Builders that was 2.25% above prime. *Hampstead Area Water Company, Inc.*, Order No. 24,296 (March 19, 2004). Presumably, the rate variation can be attributed in part to economic conditions and to the water company's perceived risk.

³ *Lakes Region Water Company, Inc.*, Order No. 24,401 (November 19, 2004), 3% over FHLBB; *Tilton-Northfield Aqueduct Company*, Order No. 24,169 (May 9, 2003), 2.75% over FHLBB; *West Swanzey Water Company*, Order No. 24,206, (September 5, 2003), 1.5% over prime.

Based on our review of the record and discussion above, we agree with Staff and the Parties that an 7.50% interest rate on the \$38,000 loan is reasonable and will approve it.

C. Permanent Rates and Step Adjustment

New Hampshire RSA 378:7 authorizes the Commission to fix rates pursuant to an order after a hearing. The Commission is obligated to investigate whether the proposed rate is just and reasonable and “balance the consumers’ interest in paying no higher rates than are required with the investor’s interest in obtaining a reasonable return on investment.” *See, Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). Traditional rate-of-return principles permit a utility to recover prudently incurred operating expenses along with “the opportunity to make a profit on its investment, in an amount equal to its rate base multiplied by a specified rate of return.” *See, Appeal of Conservation Law Foundation*, 127 N.H. 606, 634 (1986). We apply these principles to our analysis of the rates proposed by HAWC.

The rate identified in the Stipulation for Mill Woods consists of a \$100 annual charge per customer plus a consumption rate of \$5.31 per 100 cubic feet. Staff corroborated, through discovery and review of Staff’s audit, the numbers used to determine the \$52,335 in rate base and \$21,007 in revenue requirement. 9/29/05 Tr. at 24 lines 3-6. The derivation of the per customer charge necessary to produce the required revenue is shown in Exh. 1 at 16. We realize that HAWC’s pending rate case in Docket No. DW 05-112 may impact the stipulated rate for Mill Woods. This docket is attempting to consolidate the rates for the entire HAWC System and we will revisit the Mill Woods rates in the context of that rate case. For the time being, based on this record, we find the rates for Mill Woods are just and reasonable and we approve them. Should a need exist to change these rates, we will take up the matter in Docket No. DW 05-112.

The Stipulation was silent as to the implementation date of this rate. Pursuant to N.H. Code Admin. R. Puc 1203.05, rates are implemented on a service rendered basis. Accordingly, we will approve the rate on a service rendered basis effective the date of this order.

Lastly, HAWC requested at hearing that it be allowed to submit its rate case expenses to the Commission within 30 days of the date of this order. We find this reasonable and we direct Staff to review the rate case expenses and submit a recommendation as to the reasonableness of the expenses sought and we will issue an order thereafter addressing the surcharge.

Having reviewed the record before us, including the Stipulation and supporting testimony, we find the terms of the Stipulation to be reasonable and in the public good. We find the terms will result in just and reasonable rates and that they represent an appropriate balancing of utility and ratepayer interests. Accordingly, we will approve the Stipulation.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation reached between HAWC and Staff is APPROVED; and it is

FURTHER ORDERED, that HAWC shall implement the new rate for Mill Woods on a service rendered basis effective the date of this order; and it is

FURTHER ORDERED, that HAWC shall file with the Commission compliance tariffs for Mill Woods within five business days in conformance with this order; and it is

FURTHER ORDERED, that HAWC shall file with the Commission within 30 days a total of its rate case expenses for DW 05-063, a proposed recovery period, and an estimate of a proposed surcharge for Mill Woods.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary