

DW 02-077

**MANCHESTER WATER WORKS
HAMPSTEAD AREA WATER COMPANY, INC.**

Imposition of Water Use Restrictions/Penalties, Summer 2002

Order Approving Tariff Filings

O R D E R N O. 24,002

June 27, 2002

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A., by Sarah B. Knowlton, Esq., on behalf of Manchester Water Works; Robert H. Fryer, Esq. on behalf of Hampstead Area Water Company, Inc.; Office of the Consumer Advocate by Kenneth Traum on behalf of residential ratepayers; and Marcia A. B. Thunberg, Esq., for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

As stated in the Order of Notice issued May 14, 2002, the New Hampshire Public Utilities Commission (Commission) opened this docket in response to inquiries from several New Hampshire water utilities interested in filing tariff pages imposing penalties for non-compliance with water use restrictions. The Commission recognized the nature of New Hampshire's drought situation and wanted to ensure regulated water companies had adequate tools to deal with the consequences of the drought.

A letter dated April 25, 2002 from the Director of the Commission's Gas & Water Division to all regulated New Hampshire

water utilities requested that interested water companies submit tariff filings that would establish temporary measures for non-compliance with restrictions on water use during drought conditions. The Commission letter specified the following guidelines:

- 1) Tariffs providing for penalties for violations of water restrictions should be temporary, expiring no later than October 1, 2002;
- 2) Filings should be in accordance with N. H. Code of Admin. Rules Puc 1600, as applicable with accompanying requests for waivers as appropriate;
- 3) To the extent a water utility does not already have mandatory water use restrictions in its tariff, such new tariff filings should be provided in accordance with rule N. H. Code of Admin. Rules Puc 604.07. The filing should also be accompanied with sufficient detail as to determine what specific events will trigger mandatory water use restrictions such that the health and safety of all customers is protected. Procedures for adequate customer notification and communication should also be addressed; and
- 4) The utility should also provide details as to what events will end mandatory water use restrictions with appropriate notification to customers.

The Commission received letters and accompanying tariff information from Manchester Water Works (MWW) and Hampstead Area Water Company (HAWC) on May 10, 2002. A hearing on the tariff filings was held on May 30, 2002.

II. POSITIONS OF THE PARTIES

A. Manchester Water Works

MWW's supplemental tariff filing imposes penalties on customers who violate water use restrictions during severe drought conditions or water supply shortages under a Declared Emergency (Level 3) or Declared Disaster (Level 4). The tariff supplement would apply to MWW's entire service area. At the hearing, MWW presented their Drought Management Plan, dated March 27, 2002, which set forth four levels of drought response. Level 1, Alert and Level 2, Warning, do not involve penalties and MWW will achieve compliance through public education. MWW explained at the hearing that Level 3 and Level 4 involve penalties. All levels of the Drought Management Plan will be declared by MWW's Board of Water Commissioners. MWW's Drought Management Plan specifies minimum precipitation, stream flows, soil moisture, and reservoir levels for each drought response level and the Board of Water Commissioners will base their drought declarations on this criteria.

MWW stated that the water use restrictions would include activities such as lawn irrigation, curbside vehicle washing, pool filling, hosing of hard surfaces, and use of water from public or

private hydrants for non-emergency purposes. The Drought Management Plan divided these activities among the four response levels.

During a Declared Emergency (Level 3), MWW will commence public education and, upon a first violation, issue a written warning to the violator. If the violation continues, the violator will be subject to a \$50 per day penalty. If the violation persists further, the violator will face service termination. The Commission notes MWW's Drought Management Plan lists service suspension and \$50 fine as actions to be pursued simultaneously. At the hearing, however, MWW indicated service suspension would follow only after the \$50 fine failed to stop the continued violation. Tr. 5/30/02 at 15, 20. Upon the need to terminate, termination of service would occur immediately.

During a Declared Disaster (Level 4), MWW will assess violators a \$100 penalty and shall immediately terminate service. There would be no written warning issued at this level.

MWW indicated service would be restored after the violator paid the fine. Tr. 5/30/02 at 20. A reconnection fee of \$10.00 will be assessed.

Manchester Water Works urged the Commission to approve

the proposed tariff supplement as outlined above.

B. Hampstead Area Water Company

Hampstead Area Water Company (HAWC) operates in several towns and distributes water through ten water systems. HAWC proposes a supplemental tariff for all of the systems to assure customer compliance with water use restrictions.

HAWC will institute water use restrictions in the event of a water emergency that threatens supply or interruption of delivery. HAWC explained at the hearing that the first level of restriction is based on the "odd/even" rule. Customers with an odd-numbered address would be able to conduct outdoor watering on odd numbered days, and customers with even-numbered addresses would be able to conduct outdoor watering on even-numbered days. Tr. 5/30/02 at 38. The second level of restriction would limit outdoor watering to hand held devices. The third level would involve a complete ban on all outdoor watering. HAWC stated the water use restrictions would be determined and implemented on a per-system basis. Tr. 5/30/02 at 36.

HAWC proposes to provide at least 24 hours written notice of restrictions wherever possible. The notice would specify the reason for the restrictions, the nature and extent of the

restrictions, the effective date, and the probable date of termination of the use restrictions.

HAWC indicated at the hearing that they normally do not have many customers violating water use restrictions. For the few that do violate, however, HAWC believes fines are necessary to improve compliance. The supplemental tariff filing indicates the following fines would be pursued: first offense, written warning; second offense, \$50 fine; third offense, \$250 fine; fourth offense, \$500 fine. HAWC does not propose a penalty of termination of service.

To help determine if and when certain levels of restrictions are appropriate, HAWC explained their certified water operator checks the water system daily. This operator determines adequacy of water supply by examining water well production, i.e., the amount of water HAWC wells are producing, and how long the wells take to fill the water storage tanks. Tr. 5/30/02 at 42. Each system's well house is also equipped with a low water alarm. In the event the water system operator were unavailable, HAWC would resort to Lewis Companies, a water and water works engineering firm located in Litchfield, to check the status of the water supply

system.

Hampstead Area Water Company urged prompt Commission approval of their proposed page 8A of their tariff, entitled "Shortage of Supply" outlined above.

C. Office of the Consumer Advocate

The Office of Consumer Advocate (OCA) expressed concern that penalty provisions be enforced equally across all customers regardless of where they lived. The OCA did not object to the supplemental tariff filings. OCA supported the notion that MWW and HAWC verify violations by two individuals.

D. Commission Staff

The Commission Staff emphasized that both MWW and HAWC must provide adequate written notification to customers when instituting a water shortage measure that includes the imposition of penalties for customer violation. The Commission Staff expressed its support for the tariffs filed by MWW and HAWC.

III. COMMISSION ANALYSIS

RSA 378:7 authorizes the Commission to fix or approve rates pursuant to an order after a hearing. We commenced this docket for the purposes of hearing from water utilities proposing amendments to their tariff pages to permit the imposition of

penalties for noncompliance with water use restrictions during the 2002 summer season in light of the then-current extreme drought conditions throughout most of the state.

A. Notice

An important element to compliance with any of the levels of water use restrictions outlined by MWW and HAWC is notice to customers. MWW and HAWC must provide adequate notice to their customers concerning: 1) the institution of water use restrictions, and 2) any penalties which may be imposed in the event a customer violates the water use restrictions. MWW proposes to notify its customers through newspaper publications as well as through their web site. HAWC proposes notifying its customers by direct mail. Tr. 5/30/02 at 21, 43 respectively.

At the hearing, MWW indicated they have posted their Drought Management Plan, which lists the drought response levels and associated water use restrictions, on their web site. When MWW's Board of Water Commissioners change a drought response level, they plan to notify customers of that change by way of a public notice in the newspaper. Tr. 5/30/02 at 21. MWW also plans to continue educating the public of the benefits of conservation through the in-school programs they sponsor. We find these methods

of notification and HAWC's direct mailing constitute adequate notice.

B. Enforcement

MWW and HAWC were questioned as to whether the penalties for violations would be enforced in an equitable and verifiable manner. MWW and HAWC assured the Commission that the tariff provisions would be enforced on the same basis for all customers. Tr. 5/30/02 at 18, 48 respectively. Both MWW and HAWC propose to institute penalties for violation of water use restrictions based on the report of a single employee. Tr. 5/30/02 at 26, 40 respectively. At the hearing, the Commission expressed its concern that the companies attempt to confirm the reported violation by either a second employee or other measure to minimize credibility disputes in the event that a customer appeals a penalty by instituting a consumer complaint with the Commission.

C. Reasonableness of Penalties

Pursuant to RSA 378:7, the Commission may only approve the penalty rates proposed in the tariff pages if the rates are reasonable. In this docket, we must consider whether the fines requested by MWW and HAWC are reasonable in securing compliance with water use restrictions imposed during times of drought and

water shortage. We determine that both MWW and HAWC have satisfied this requirement.

MWW's tariff supplement would impose graduating penalties in relationship to the severity of the water shortage experienced.

In the event of a Level 3 Declared Emergency, MWW would impose a \$50 fine, after written warning, against customers who violated use restrictions. In the event of a Level 4 Declared Disaster, MWW would impose a \$100 fine. Tr. 5/30/02 at 20. After consideration of the testimony at the hearing concerning enforcement efforts and the level of violators, we believe that these penalties are reasonable.

HAWC's graduated penalties differ from MWW and are tied not to any particular severity level of water shortage but are based on the recalcitrance of the violator. Tr. 5/30/02 at 36. HAWC testified at the hearing that they do not have a problem with numerous violators but that their problem lies with the violator who has a higher tolerance to fines. After consideration of the testimony at the hearing, we find that HAWC's fines, as set forth above, are reasonable.

In addition to the monetary penalties, MWW proposes disconnection of service in the event of continued violations at

Level 3 and Level 4 declared drought conditions. We deem this reasonable because MWW already has this authority. Under Puc 1203.11(b)(3), a water utility may disconnect a residential or non-residential customer, without advance notice, if "a condition dangerous to the health, safety, or utility service of others exists", so long as the utility provides notice to the Commission within 48 hours of the disconnection. It was evident from the testimony at the hearing that a water system's safety might be placed in jeopardy by overuse during times of drought conditions and water shortages. MWW's supplemental tariff filing's inclusion of termination of service is thus consistent with the Commission's administrative rules.

D. Appeal by Consumer

Appeal provisions were not specifically noted in the supplemental tariff filings. At the hearing, both MWW and HAWC acknowledge that such appeals would be possible and are the right of any customer. In addition, MWW stated customers could appeal to their Board of Water Commissioners. Tr. 5/30/02 at 23. HAWC did not elaborate on any appeal provision at the hearing. We recognize, however, that a customer who faces either a fine or termination of service has a right of appeal to the Commission in

the form of a written complaint pursuant to N.H. Code of Admin. Rules Puc 1203.09 and RSA 365:1.

Based upon our review of the record and testimony at the hearing held on May 30, 2002, we find that the supplemental tariff pages proposed by MWW and HAWC and the penalties established therein are just and reasonable.

Based on the foregoing, it is hereby

ORDERED that the proposed tariff pages, NH PUC No. 4, Water, Manchester Water Works, Original Page 39 and NH PUC No. 2 Water, Hampstead Area Water Company, Original Page 8A be approved; and it is

FURTHER ORDERED, that NH PUC No. 4, Water, Manchester Water Works, Original Page 39 expire on October 1, 2002 and NH PUC No. 2 Water, Hampstead Area Water Company, Original Page 8A s shall expire on September 30, 2002; and it is

FURTHER ORDERED, MWW and HAWC shall, within fourteen days, submit a compliance tariff in conformance with this order as well as with Puc 1603.

By order of the Public Utilities Commission of New
Hampshire this twenty-seventh day of June, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary