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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 3, 2008 - 11:12 a.m.
Concord, New Hampshire

RE: DW 08-088
HAMPSTEAD AREA WATER COMPANY:
Petition for Authority to Borrow
Long-Term Debt, to Construct Water
System Interconnection, Approval to
Extend Franchise Area and for Step
Rate Increase. (Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. Below

Connie Fillion, Clerk

APPEARANCES: Reptg. Hampstead Area Water Company:
Robert C. Levine, Esq.

John Wolters, pro se

Reptg. Residential Ratepayers:
Rorie Hollenberg, Esq.
Stephen Eckberg
Office of Consumer Advocate

Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the prehearing conference in docket
4 DW 08-088. On June 27, Hampstead Area Water Company filed
5 a petition for authority to borrow long-term debt, to
6 extend its franchise area, and for a step increase in
7 rates. It seeks to borrow \$1,100,885 from the State
8 Revolving Loan Fund to fund the construction of an
9 interconnection between its two core systems in the Towns
10 of Hampstead and Atkinson. Order of notice was issued on
11 July 30 setting the prehearing conference for this
12 morning.

13 I'll note for the record that we have a
14 letter from the Consumer Advocate indicating that it would
15 be participating in the proceeding. We also have the
16 affidavit of publication. And, we have a Petition to
17 Intervene from it looks like two citizens of the Town of
18 Atkinson.

19 So, at this point, can we just take
20 appearances for the record, and then we'll hear a
21 statement of the positions from the parties.

22 MR. LEVINE: Thank you, Commissioner.
23 Attorney Robert Levine, attorney for Hampstead Area Water
24 Company. With me today is Stephen St. Cyr, our

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1 consultant; our Controller, John Sullivan; our Vice
2 President, Christine Lewis Morse; our President Harold
3 Morse; and Charlie Lanza from our Engineering Department.

4 CHAIRMAN GETZ: Good morning.

5 CMSR. MORRISON: Good morning.

6 CMSR. BELOW: Good morning.

7 CHAIRMAN GETZ: If it's Ms. Grant or Mr.
8 Wolters, if you could just identify yourselves for the
9 record?

10 MR. WOLTERS: Yes. John Wolters and
11 Shirley Davis, and she's not on the petition.

12 CHAIRMAN GETZ: Okay. And, from the
13 Town of Atkinson?

14 MR. WOLTERS: Yes.

15 CHAIRMAN GETZ: Okay. Thank you.

16 MS. HOLLENBERG: Good morning again.
17 Rorie Hollenberg and Stephen Eckberg, here for the Office
18 of Consumer Advocate.

19 CHAIRMAN GETZ: Good morning.

20 CMSR. MORRISON: Good morning.

21 CMSR. BELOW: Good morning.

22 MS. THUNBERG: Good morning,
23 Commissioners. Marcia Thunberg, on behalf of Staff. And,
24 with me today is Mark Naylor, Jim Lenihan, Jayson

{DW 08-088} [Prehearing conference] (09-03-08)

1 LaFlamme, and Doug Brogan and Stu Hodgdon. Thank you.

2 CHAIRMAN GETZ: Thank you. And, I don't
3 know if you've been advised of the process, but what we'll
4 do now is everybody gets a chance to state their position
5 on the record. So, Mr. Levine.

6 MR. LEVINE: Thank you, Commissioner.
7 The Company is requesting authorization to borrow
8 \$1,100,885 from the State of New Hampshire State Revolving
9 Loan Fund as administered by DES for the interconnection
10 with the Hampstead core and the Atkinson core systems.
11 We're asking that the Commission find that it would be in
12 the public good to have that financing approved, and also
13 that the approval of the project for which the financing
14 is being requested is also prudent and consistent with the
15 public interest. We're asking that the Commission also
16 approve a rate increase, a step increase attributable to
17 the repayment of the financing as part of this docket, and
18 also approve an expansion of our franchise so that we may
19 serve customers that will then be in the area that the
20 interconnection shall be coursing through.

21 As the Commission noted, there was a
22 Petition to Intervene, which was filed with the
23 Commission, it's dated August 20th. I have a objection
24 that I wish to file with the Commission to the Petition

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1 for Intervention. I have provided copies to Mr. Wolters,
2 the OCA, and to Staff.

3 CHAIRMAN GETZ: Okay. Do you want to
4 summarize this objection or do you want to just rest on
5 the papers?

6 MR. LEVINE: I can summarize it.
7 Basically, the issue cited in the Petition to Intervene is
8 based on an ordinance that had been passed by the Town of
9 Atkinson that prohibits the transport of water outside of
10 town boundaries. Our position is that the people who are
11 seeking to intervene are neither customers of the water
12 company or within the route for the proposed
13 interconnection. The Town of Atkinson has not filed any
14 appearance in this docket. They're the ones charged with
15 the enforcement of the ordinance. We feel that the
16 ordinance is not appropriate for the Commission to enforce
17 and outside of its jurisdiction as a statutory agency.
18 It's more appropriate for the state court to take up the
19 validity or the enforcement of such an ordinance.

20 We're concerned about the intervenors
21 having party status. We feel that it would unduly
22 complicate the proceedings. We think that their concerns
23 are more appropriately raised as part of public comment,
24 as provided in the statute. For all those reasons, we

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1 feel it's within the discretion of the presiding officers
2 to not allow intervention on these issues as part of the
3 interconnection proceeding. Thank you.

4 CHAIRMAN GETZ: Thank you. Mr. Wolters,
5 and also if you could clarify, in the Petition to
6 Intervene, it says it's "for the Petitioners and
7 supporting voters of both Atkinson Special Town Meetings".
8 So, I want to clarify, is -- do you have some official
9 capacity on behalf of the town or on behalf of other
10 individuals, or is this filed basically individually?

11 MR. WOLTERS: It was filed individually.
12 However, I do have petitions here of 60 individuals when
13 we placed this on the docket originally. We also held
14 several town meetings in which we invited the entire town.
15 And, we had a vote on that particular ordinance, and it
16 was approved 70/30. I mean, the Town is really very much
17 enthusiastic enforcing that type of the thing, the people
18 there. And, the reason I've come today, not that
19 intervening is exactly the PUC's, from what I'm hearing,
20 it isn't what you're looking for, our concern is that for
21 the past six years they have only had a 7,000 gallon a day
22 growth, 7,000 gallon a day. They're asking for, by 2010,
23 100,000 gallon increase. And, by 2014, a 250,000 gallon a
24 day increase. The total amount, from what they're taking

1 now, plus what they want to take, and 16 percent that
2 they're allowed for waste, comes to 442 million gallons a
3 year from this town of 6,600 people. They have wells
4 they've drilled up to 840 feet deep. I know of no one in
5 the town that has a well near that depth. They have wells
6 from 100 to 400 feet. And, as you know, you draw water,
7 that type of quantity of water, it's going to -- it could
8 lower the level of which you're pumping water out at a lot
9 lower than their wells. There's no means in their
10 application to cover if people get harmed from their
11 drawdown.

12 And, we do have an ordinance that asked
13 them not to sell water outside. If it's consumed in the
14 Town, we don't object to that. But the town people do not
15 want the water sold to other towns. And, that is the
16 intent of why I'm here. I just happen to be the president
17 of a condo association that has 121 voters. And, I have
18 numerous petitions that other people have signed here.
19 But I'm just a layperson who's interested in the
20 community. These people have a money motive, and they're
21 not considering the intent of what's in the best interest
22 of that community.

23 CHAIRMAN GETZ: Okay. Do you want to
24 respond at all to the objection to your intervention?

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1 MR. WOLTERS: Well, I think what they're
2 mentioning, it's involved as to what I put down on the
3 intervention, but there's more to it than that. I could
4 see, because of my lack of experience, I didn't put down
5 enough of like I'm trying to point out now. In their
6 application, as I've already stated, they have only had a
7 growth of 7,000 gallons a day, and yet they're asking for
8 250,000 gallons over the next six and a half, seven years.
9 There's an intent beyond the community. Nowhere in that
10 application does it say that "we need it for this road and
11 this road and these people and that people." They want to
12 sell it elsewhere. That's exactly what the people there
13 do not want. And, I ask the Commission not to approve
14 their loan for this purpose.

15 CHAIRMAN GETZ: Thank you. Well, if
16 there's any other paperwork that you have that you want to
17 file, make sure that the Clerk gets it before you leave
18 today.

19 MR. WOLTERS: Okay. Thank you.

20 CHAIRMAN GETZ: Thank you.

21 Ms. Hollenberg.

22 MS. HOLLENBERG: Thank you. I'll be
23 brief. The Office of Consumer Advocate has already
24 addressed its opposition to the requested rate increase

1 within this financing docket. And, so, I won't repeat
2 what I've said earlier in the prehearing conference on DW
3 08-065. However, I do ask that the Commission take
4 administrative notice of those statements. And, I also
5 ask that the Commission take administrative notice of a
6 statement of the Company in that prehearing conference, in
7 response to a question posed by Chairman Getz, that the
8 Company will not begin repayment of the SRF loan until the
9 later part of 2009.

10 Moreover, I would just make the
11 statement that we do take no position on the Petition to
12 Intervene. Thank you.

13 CHAIRMAN GETZ: Thank you.
14 Ms. Thunberg.

15 MS. THUNBERG: Yes. Thank you,
16 Commissioners. And, like OCA, Staff has yet to form a
17 position on the Company's petition at this stage of the
18 proceeding. But, given that discovery will occur in this
19 proceeding, we will offer our position on the petition at
20 a later point. Staff is aware that DES is pushing for
21 this interconnection, but Staff will come up with its own
22 conclusion.

23 With respect to the intervention
24 request, as presented on the motion, on the Petition to

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1 Intervene, it was Staff's understanding that enforcement
2 of the ordinance or the Commission's assistance in
3 breaching the ordinance was the crux of the intervenors'
4 argument. And, on that point, Staff does not believe or
5 it would be Staff's position that the petitioners have not
6 met the requirements of 541-A:32 that the rights, duties,
7 and privileges would be impacted by this proceeding. And,
8 that is because this ordinance that's attached to the
9 petition does have a citizen enforcement clause, and there
10 has been no enforcement of this ordinance yet. If that
11 were the case, the Company could proceed under 674:30 and
12 request the municipality to waive the ordinance. If they
13 were unsuccessful there, they could come here and we would
14 have a specific docket dealing with the issue of whether
15 to waive that, the ordinance that has been attached to the
16 petition.

17 Now, enforcement is not before this
18 Commission, it would be to Superior Court. There is no
19 Superior Court action yet. If there were, then Staff
20 would concede that there would be rights, duties, and
21 privileges that would overlap with the proceeding
22 continuing here.

23 There's another point I wish to make.
24 The ordinance does make state employees, agencies liable

1 under the ordinance, and Staff is only aware of RSA 541-B
2 as where the Legislature had made a -- had carved out very
3 few exceptions to the sovereign immunity clause, where
4 state agency employees acting under their employment could
5 be subject to liability.

6 Having said that objection, in talking
7 with the intervenors, it seems, even though they are not
8 customers, they are concerned with the development water
9 use of the general area. This is a franchise area. I'm
10 not sure if they are specifically within the franchise
11 area. But, even if they're not, they may be adjacent,
12 they may be future customers. And, if the intervenors are
13 interested in this docket because of the planning for
14 water use in the area, then Staff would concede that they
15 do have rights, privileges, and duties and would satisfy
16 the intervention of 541-A:32.

17 So, our position with respect to the
18 intervention is two-fold. One, objection -- objecting
19 based on what is written. And, the other concurring with
20 the request if it is more or if it's enlarged to concerns
21 about water use in the Town of Atkinson where they reside.
22 Thank you.

23 CHAIRMAN GETZ: Thank you. Well, let me
24 return to the issue of the Motion to Consolidate, and let

1 me confirm this with you, Ms. Hollenberg. What I take the
2 OCA's motion is really solely with the issue of the step
3 increase, and that your proposal is that the step increase
4 be considered in the context of the rate case, is that
5 accurate?

6 MS. HOLLENBERG: Yes, sir.

7 CHAIRMAN GETZ: And, we haven't had the
8 opportunity to deliberate this issue. Let me just express
9 my personal concerns at this juncture. First, is that the
10 notion of a step increase, while a rate proceeding is
11 going on, raises questions in my mind about "should we
12 being going down two paths?" But, I think, to resolve
13 that issue, need to be clear on a question of fact, "then
14 what is the DES's requirement in this regard?" And, there
15 seems to be different characterizations of a phone call
16 and past practice. I think we need to hear something
17 directly from DES, something in writing and something with
18 some specificity about this particular case and what it
19 requires in order to approve the Revolving Fund loan.
20 And, I think that's the critical piece before we can make
21 a decision about the step increase. So, if we could get
22 something in writing from DES, if Staff could reach out or
23 Staff and the OCA and the Company, however the parties
24 want to proceed on that is up to the parties.

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1 Is there any other questions in that
2 regard? Any other issues?

3 (No verbal response)

4 CHAIRMAN GETZ: Any other issues that
5 the parties want to raise this morning? Mr. Levine.

6 MR. LEVINE: Just in response to
7 Mr. Wolters' statements. Our water usage and the -- what
8 he's referring to is the large groundwater petition that
9 is before -- application that is before DES. And, it just
10 again raises a concern as to the orderly proceeding of
11 this particular docket, and without complicating it with
12 outside issues. And, it does raise concerns for the
13 Company in just obtaining the relief that we're
14 requesting, as far as the financing goes for this
15 interconnection. Those monies with the SRF financing
16 again are rotating and prioritized. And, it is our
17 concern that they be available.

18 CHAIRMAN GETZ: Thank you. Anything
19 further this morning?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Hearing nothing,
22 then we'll close the prehearing conference and await some
23 kind of formal contact from the Department of
24 Environmental Services, and take the matter under

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1 advisement. Thank you, everyone.

2 MR. LEVINE: Thank you.

3 (Whereupon the prehearing conference

4 ended at 11:30 a.m.)

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