

DW 05-092

HAMPSTEAD AREA WATER COMPANY, INC.

Petition for Approval to Expand Franchise, Approval to Drill and Operate a Well Inside of the New Franchise Area, Approval of Financing, Approval of the Acquisition of Assets and Approval of Permanent Rates

Order *Nisi* Granting Approval of Petition

ORDER NO. 24,592

February 24, 2006

I. BACKGROUND

Hampstead Area Water Company, Inc. (HAWC) is a New Hampshire public utility as defined by RSA 362:2 and 362:4 and currently serves approximately 2,500 customers in various communities throughout southeastern New Hampshire. On May 11, 2005, HAWC filed with the New Hampshire Public Utilities Commission (Commission) a petition relative to a new water system intended to serve the Jameson Ridge subdivision development located off Main Street in the Town of Atkinson, New Hampshire. In the petition, HAWC seeks authority to: 1) expand its franchise area within the Town of Atkinson; 2) drill and construct a well field within the Town of Atkinson; 3) acquire the assets of the water system servicing the Jameson Ridge subdivision development; 4) issue debt in order to finance the acquisition of the water system assets; and 5) charge the Walnut Ridge rate to the customers served by the Jameson Ridge water system. In support of its petition, HAWC also submitted copies of agreements, schedules, and pre-filed testimony of Peter A. Lewis, President of HAWC; John Sullivan, controller for HAWC; Brian Boyle, manager of Winslow Drive Realty Group, L.L.C. (Winslow); and Oliver Poirier, P.E. of HAWC.

Jameson Ridge is a proposed 27-unit single family, condominium development owned by Winslow. Neither Winslow nor its principles are affiliated with HAWC or Lewis Builders Development, Inc. (LBDI). Winslow plans to have LBDI construct the majority of the Jameson Ridge water system.

HAWC filed with its petition an executed Water Rights Deed and Easements between Winslow and HAWC, dated October 11, 2004, and an executed agreement to purchase the Community Water System, dated October 1, 2004. Petition at 8-14 and 19-20. These water system assets will include a well, pumping and treatment equipment, transmission and distribution mains, services, and hydrants. Pursuant to the petition, the purchase price is determined by multiplying the number of residential units, 27, by \$1,000 per dwelling “hook-up”, or \$27,000. HAWC will also purchase meters from LBDI at a cost of \$8,775, for a total purchase price of \$35,775. This is the amount HAWC proposes to finance. The cost to build the water system is estimated at \$303,265. Petition Exh. 4, 5, and 7. HAWC plans to treat the difference between \$303,265 and \$35,775, or \$267,490, as Contributions in Aid of Construction (CIAC).

HAWC’s proposed franchise expansion, which includes Jameson Ridge, is within the Town of Atkinson and is bounded by Maple Avenue, Academy Avenue, Main Street, Stone Pound Lane, and tax map lots 103, 102, 18/107, 25, 39, 18/84, 18/85, 18/78, and 18/70. The Jameson Ridge system was connected to the Atkinson Core system in August 2005. HAWC requested that the Walnut Ridge rate, which is charged to its Atkinson Core customers, also be applied to the proposed franchise expansion area. This rate consists of a \$25.00 quarterly charge and a \$2.72 per 100 cubic foot consumption charge. This rate was approved in *Hampstead Area*

Water Company, Inc., Order No. 24,556 (December 2, 2005) as a temporary rate for Walnut Ridge, pending the Commission's review of HAWC's proposed permanent rate in Docket No. DW 05-112.

HAWC seeks to finance the purchase of the Jameson Ridge water system assets through Winslow and LBDI. HAWC executed two promissory notes. The first note, dated October 1, 2004 with Winslow, is in the amount of \$27,000. The second note, dated November 29, 2005, with LBDI, is in the amount of \$8,775. The terms of both notes call for HAWC to pay one-tenth of the total principal on each of the ten anniversary dates of both notes plus interest at 2.25% above the Prime Rate published in the Wall Street Journal on the last business day of the calendar year preceding a particular anniversary date. All outstanding principal and interest on each note are due and payable by the tenth anniversary date of each note. The interest rate of both notes is currently 7.50%.

HAWC also seeks to drill and construct a well field within the proposed franchise area. In correspondence dated June 3, 2004, the New Hampshire Department of Environmental Services (NH DES) granted approval for the Jameson Ridge well. Subsequently, however, NH DES issued another letter on October 26, 2004, which indicated that the private well of an adjacent homeowner had been severely impacted as a result of a short pumping test that had been conducted by HAWC. As a result, NH DES required HAWC to monitor the adjacent homeowner's well and, if necessary, implement measures in order to mitigate any adverse effects that the operation of the Jameson Ridge well may have on the adjacent well.

On March 26, 2005, the Commission received correspondence from the Atkinson Board of Selectmen indicating they had received notification of the proposed petition regarding

the Jameson Ridge water system. No subsequent correspondence has been received from the Atkinson Board of Selectmen relative to this docket.

On January 24, 2006, the Commission Staff (Staff) filed a letter recommending that the Commission approve HAWC's petition. Staff estimated HAWC's initial interest rate to be 7.5 %, given the current Prime Rate. Staff concurred with HAWC's filing that \$35,775 ought to be allowed as rate base and that \$267,490 of the estimated construction cost of \$303,265 ought to be treated as CIAC. Staff stated that a full audit of the Continuing Property Records (CPRs) had not been performed because construction of the water system had not yet been completed. Staff recommended, therefore, that an examination of the CPRs for the Jameson Ridge water system be performed by the Commission Audit Staff within 60 days of final completion of the water system assets. Staff further recommended that HAWC keep the Commission apprised of any impact that the operation of the Jameson Ridge well has on adjacent properties.

II. COMMISSION ANALYSIS

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

HAWC and its predecessor, Walnut Ridge, have been operating water systems in New Hampshire for approximately 40 years. See, *Walnut Ridge Water Company, Inc.*, 62 NH PUC 190 (1977). HAWC has previously demonstrated the requisite managerial, technical and financial expertise to operate its various systems and we are aware of no evidence that HAWC now lacks that expertise.¹ With respect to the requirements of RSA 374:22, III relating to suitability and availability of water, based upon the correspondence dated June 3, 2004 from NH DES, HAWC has satisfied RSA 374:22, III. With regard to the effect operation of the Jameson Ridge well may have on adjacent properties, we concur with Staff's recommendation and will require HAWC to submit copies to the Commission of any correspondence or reports sent between it and NH DES regarding this matter. Accordingly, we find that expanding HAWC's franchise territory to include the area proposed is reasonable and will approve HAWC's request for franchise expansion within the Town of Atkinson subject to the condition stated herein.

Next, we turn to the issue regarding HAWC's request for approval of the financing associated with the purchase of the water system assets. 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." The New Hampshire Supreme Court has further provided that 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 the public good is protected. See *Appeal of Easton*, 125 N.H. 205 (1984).

¹ *Walnut Ridge Water Company, Inc.*, 62 NH PUC 190 (1977); *Bryant Woods Water Company, Inc.*, 73 NH PUC 465 (1988), *Walnut Ridge Water Company, Inc. and Bryant Woods Water Company, Inc.*, 75 NH PUC 740 (1990), *Hampstead Area Water Company, Inc.*, 87 NH PUC 259 (2002).

HAWC intends to use the proceeds of the financing to purchase the Jameson Ridge water system assets. These assets include a well, pumping and treatment equipment along with the appurtenant structures, transmission and distribution mains, services, hydrants and meters. The Commission has long believed that a water utility's ownership of the infrastructure it uses to provide water to customers is in the public interest. HAWC's petition proposes a purchase price which includes a \$1,000 per service connection charge totaling \$27,000 from Winslow, plus an \$8,775 charge for meters from LBDI, for a total purchase price of \$35,775. We believe that the methodology used in determining the purchase price is consistent with that which the Commission approved in DW 02-128. See *Hampstead Area Water Company, Inc.*, Order No. 24,362 (August 19, 2004). We deem the proposed purchase price to be reasonable. The difference between the cost of construction of \$303,265 and the proposed purchase price of \$35,775 will be recorded by HAWC as CIAC and will be excluded from rate base in subsequent rate proceedings.

Because the Jameson Ridge water system is not fully built, Staff recommended the Commission order an audit of HAWC's CPRs for the Jameson Ridge system. We agree with Staff that an audit is appropriate to ensure HAWC's plant accounting is accurate and in compliance with the Uniform System of Accounts for Water Utilities. Such examination would be prudent, given the deficiencies in HAWC's plant accounting addressed in Commission Docket Nos. DW 02-128 and DW 02-198. Accordingly, we find that HAWC's proposed purchase for the Jameson Ridge water system assets in the amount of \$35,775 is prudent and in the public good and we will approve that acquisition subject to confirmation of the CPRs through Staff's audit.

Having found that the intended use of the proposed financing for the purchase of the water system assets is both prudent and in the public good, we now turn our attention to the proposed terms of the two promissory notes and their impact on customer rates. Those terms require that HAWC pay Winslow the sum of \$27,000 and LBDI \$8,775, each in ten equal principal installments on the anniversary dates of the note plus interest at 2.25% above the Prime Rate published in the Wall Street Journal on the last business day of the calendar year preceding the anniversary date. The terms of the financing under consideration in the instant docket are consistent with those found in other financings by HAWC that the Commission has recently approved. We conclude that these terms will not have an adverse impact on future customer rates. Based on our review of the record and discussion above, we find the proposed financing for the purchase of the assets of the Jameson Ridge water system assets in the amounts of \$27,000 from Winslow and \$8,775 from LBDI are consistent with the public good. Accordingly, we approve the financing.

We next address HAWC's request for approval to charge the Jameson Ridge customers the same Walnut Ridge rate it charges its Atkinson Core customers. As stated previously, the Commission approved temporary rates in the amount of \$25.00 per quarter and \$2.72 per 100 cubic feet of water consumed, effective November 30, 2005, on a service rendered basis. See *Hampstead Area Water Company, Inc.*, Docket No. DW 05-112, Order No. 24,556 (December 2, 2005). Because rates for Jameson Ridge and other customers are being fully investigated in Docket No. DW 05-112, we will defer consideration of what permanent rates should be charged Jameson Ridge customers in the instant docket and we will consider appropriate rates in the context of Docket No. DW 05-112.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Hampstead Area Water Company, Inc.'s request to expand its franchise to serve customers in the Jameson Ridge development and surrounding area as described above is approved; and it is

FURTHER ORDERED, that subject to the effective date below, Hampstead Area Water Company, Inc.'s request to finance the purchase of the Jameson Ridge water system assets from Lewis Builders Development, Inc. and Winslow Drive Realty Group, L.L.C. under the terms and conditions stated in Hampstead Area Water Company, Inc.'s petition, is approved; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. is authorized to charge Jameson Ridge customers the present Walnut Ridge rate, which is a temporary rate, in the amount of \$25.00 per quarter and \$2.72 per 100 cubic feet of water consumed, effective November 30, 2005, on a service rendered basis until permanent rates are established in Docket No. DW 05-112; and it is

FURTHER ORDERED, that within 60 days from the date of completion of construction of the Jameson Ridge water system, Hampstead Area Water Company, Inc. shall make available for review by the Commission Staff, the Continuing Property Records pertaining to the Jameson Ridge water system assets; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than March 6, 2006 and to be documented by affidavit filed with this office on or before March 27, 2006; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than March 13, 2006 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 20, 2006; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 27, 2006, unless Hampstead Area Water Company, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. shall file a compliance tariff with the Commission on or before March 27, 2006, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of February, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary