

PUBLIC UTILITIES COMMISSION

DW 19-031

HAMPSTEAD AREA WATER COMPANY, INC.

Petition to Expand Franchise - Sandown

Order *Nisi* Approving Limited Franchise Expansion

ORDER NO. 26,381

July 21, 2020

This order approves an expansion of Hampstead Area Water Company's franchise to serve the Kelly Green development in the Town of Sandown and to charge its consolidated rate to the new customers within the expanded franchise. This order also authorizes Hampstead Area Water Company to borrow \$22,000 to purchase assets required to provide water service. This order is issued on a *nisi* basis to ensure that interested persons receive notice and have the opportunity to comment or request a hearing before the order becomes effective.

I. PROCEDURAL HISTORY

Hampstead Area Water Company, Inc., (HAWC or the Company), is a regulated water utility providing water service to approximately 3,700 customers in thirteen towns. On February 12, 2019, HAWC petitioned for, among other things, authority to expand its current Fairfield franchise within the Town of Sandown, from 22 acres to approximately 253 acres.¹ A prehearing conference was held on May 8, followed by a technical session. Commission Staff (Staff) filed its recommendation on December 6, to which HAWC filed its response on December 17. The Company's petition and subsequent docket filings, other than any

¹ HAWC's Fairfield franchise was originally authorized by Order No. 25,318 (January 18, 2012).

information for which confidential treatment has been requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2019/19-031.html>.

II. POSITIONS

A. HAWC

HAWC petitioned to expand its current Fairfield franchise within Sandown, seeking to enlarge the area from 22 acres to approximately 253 acres. HAWC also sought authority to: (1) operate a water system inside the franchise expansion; (2) acquire certain assets; (3) finance \$22,000 at zero percent interest; and (4) charge the Company's existing consolidated rate to customers in the proposed area.

According to HAWC's petition, the primary purpose of the franchise expansion is to provide water service to a new 22-unit apartment development called Kelly Green. Kelly Green is adjacent to the Company's existing Fairfield community water system. The Fairfield community water system includes an existing pump house, distribution system, and bedrock well. HAWC drilled a second bedrock well to provide additional water to the existing Fairfield system. The combined wells are designed to provide the necessary water capacity for the Fairfield community customers and the new customers within Kelly Green. The expanded water system will not be connected to HAWC's core distribution system, and the Company does not intend to provide fire protection services. HAWC stated that the Company will provide pumping capacity for Kelly Green fire sprinklers, which will utilize the existing storage capacity of the Fairfield system. If approved, HAWC proposed to charge its current consolidated rate to the new customers.

Lewis Builders, Inc., (Lewis), owns Kelly Green, and contracted with Lewis Builders Development, Inc., (LBDI), to design and construct Kelly Green's water system for \$70,500.² After construction, Lewis would own the water system. HAWC, in turn, would purchase the completed water system from Lewis at the cost of \$1,000 per apartment unit. The Company provided a promissory note between HAWC and Lewis for total financing of \$22,000 at zero percent interest.

HAWC would pay \$1,000 for each unit as it connects to HAWC's water service. HAWC stated that the remaining \$48,500 in construction costs would be recorded by the Company as a Contribution in the Aid of Construction (CIAC). HAWC also stated that it would accept a separate cash contribution of \$10,185 from Lewis towards the Company's potential federal and state income tax liability associated with the CIAC. *See Pennichuck East Utility*, Order No. 26,285 at 1 (August 9, 2019) (discussing the change in federal and state income tax laws which removed water utilities' exemption of CIAC from income tax liability).

HAWC's requested franchise expansion would extend outside the Kelly Green development, encompassing additional private lots and HAWC's Mill Woods franchise.³ HAWC said that it requested the larger franchise area, in part, as a matter of efficiency, to avoid the costs associated with separate, future franchise petitions. The Company stated, also, that it received a request for water service from one potential customer located outside the Mill Woods franchise. The proposed franchise would be adjacent to an existing franchise area that contains a portion of the Company's core distribution system. The Company, however, did not provide plans for additional wells or propose connections to the core system.

² Lewis, LBDI, and HAWC are related through common ownership. According to HAWC's 2019 annual report, the Company listed LBDI as the entity that owns, controls, or operates HAWC. *Hampstead Area Water Company, Inc., 2019 Annual Report*, April 20, 2020, at 6.

³ The Company's Mill Woods franchise expansion was approved by Order No. 24,544 (November 18, 2005).

B. Staff

Staff recommended approval of a limited area of the requested franchise expansion. Staff noted that HAWC continues to demonstrate a “commitment to expand clean, potable, public water service to additional customers at just and reasonable rates, through their expertise in establishing and maintaining multiple public and community water systems.” Commission Staff Recommendation, December 6, 2019, at 3. Staff further recommended that the Commission continue to find that the Company possesses the managerial, financial, and technical expertise required in a public good finding for a franchise expansion, as it had in HAWC’s previous franchise expansion requests.

Staff, however, recommended limiting the franchise expansion to include only Kelly Green, citing RSA 374:22, III (“no water company shall obtain the permission or approval of the commission to operate as a public utility without first satisfying any requirements of the department of environmental services concerning the suitability and availability of water”). Staff argued that the approval letter HAWC relied upon from the New Hampshire Department of Environmental Services (DES) only verified the availability of suitable additional water for Kelly Green, and did not justify the entire proposed franchise area. Staff said HAWC did not provide plans to drill additional wells or to connect the franchise area to its core distribution system. Staff also noted the DES letter required compliance with several other conditions. In conclusion, Staff recommended that if the Commission approved the limited area, HAWC should be required to resubmit the boundaries of the approved franchise area.

Staff also recommended that the Company be permitted to charge its consolidated rate within the limited franchise area. Staff contended that as the Commission has recently found HAWC’s consolidated rate just and reasonable pursuant to RSA 378:7 in prior proceedings (Order No. 26,165 (July 31, 2018) and Order No. 26,195 (November 28, 2018)), the Commission

should continue allowing HAWC to charge that same rate to the customers of the expanded franchise.

Staff recommended that the Commission approve HAWC's financing request pursuant to RSA 369:1 and RSA 369:4. Staff noted that the arrangement between the Company and Lewis to purchase the assets to serve each apartment unit for \$1,000 as each unit receives water should be treated as long-term debt (greater than 12 months) pursuant to RSA 369:1. As such, Staff recommended that the terms of the promissory note, including a lack of interest charges and other specific terms, should be found reasonable by the Commission. Staff concluded that the terms of the promissory note would not have a material impact on HAWC's debt/equity ratio, and thus should be approved by the Commission.

Staff asserted no additional authority was needed for the Company to operate a water system inside the franchise expansion or to acquire certain assets. Staff noted that HAWC was not acquiring an existing water franchise or company, thus only the expansion of the Company's franchise, pursuant to RSA 374:22 was necessary. Staff also concluded no approval of the contract concerning the receipt of CIAC was required. Staff, instead, suggested the Company work with Staff to address the receipt of CIAC and the associated potential tax liability, in Docket No. DW 19-136.

Staff, noted that it had become aware during discovery that 15 units of Kelly Green would be occupied and requesting water service by the end of August 2019. Staff, stated it had become aware that those customers would not be billed for that service. In its recommendation, Staff referenced the Company's possible violations of RSA 378:14 (prohibition against free service) and RSA 374:22 (cannot exercise franchise rights without prior Commission approval). Staff did not recommend terminating water service to the customers, penalizing the new customers, or penalizing the Company, but reminded the Company that as a regulated water

utility, it must abide by New Hampshire statutes. If not, Staff argued, HAWC could be subject to civil penalties pursuant to RSA 365:41 and RSA 365:42. Staff, however, recommended that the Company be barred from collecting any past revenues for services already provided to the new customers.

C. HAWC's Response to Staff Recommendation

The Company responded to Staff's recommendation on December 16, 2019. HAWC argued that Staff overlooked the "Well Siting Approval" it provided to support the need of the entire franchise area request, stating that the approval "allows for additional capacity to serve additional connections to HAWC's Fairfield Water System." Hampstead Area Water Company, Inc., Response to Staff's Recommendation, December 16, 2019, at 1. HAWC additionally stated that it contacted DES and obtained a letter, which was attached, confirming that the "Fairfield community water system currently has the required water supply to service additional connections in addition to the currently approved 37 service connections." *Id.*

The Company also noted that it received a request for service in the southern portion of the proposed franchise expansion, and that the larger area would allow the Company to connect its existing Hampstead and Sandown franchises should a regional connection be necessary. HAWC also stated that it is within the public good to approve the greater area as it would save on the cost of an additional petition for the remaining area and avoid notable regulatory lag.

HAWC also revised its CIAC calculations, and agreed to work with Staff on tariff revisions in Docket No. DW 19-136. The Company, however, stressed the importance of a Commission decision to address the CIAC tariff change in that docket.

III. COMMISSION ANALYSIS

A. Franchise Expansion and Consolidated Rates

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 will grant a request for franchise authority if it finds that it is for the public good. RSA 374:26. When determining whether a proposed franchise is for the public good, the Commission assesses, among other things, the managerial, technical, and financial expertise of the petitioner. *Hampstead Area Water Company, Inc.*, Order No. 26,301 at 4 (October 22, 2019). Under RSA 374:22, III, no water company shall obtain the permission or approval of the Commission to operate as a public utility without first satisfying any DES requirements concerning the suitability and availability of water.

The Commission previously found that HAWC possesses the requisite managerial, technical, and financial capabilities to provide water service. *See id.* at 4-5; *Hampstead Area Water Company, Inc.*, Order No. 26,153 at 4 (June 26, 2018) (approving transfer of utility assets and franchise rights from Bow Lakes Estates Water Works to HAWC); and *Hampstead Area Water Company, Inc.*, Order No. 25,979 at 4-5 (January 23, 2017) (approving franchise expansion into Wells Village, Sandown).

Based on our review of the record and Staff’s recommendation, we find that HAWC continues to possess the managerial, technical, and financial capabilities to provide water service. We further rule, however, based on Staff’s recommendation, that expansion of the franchise area should be limited to Kelly Green.

We agree with Staff’s recommendation and find that HAWC has only provided sufficient evidence of suitability and availability of water, pursuant to RSA 374:22, III, to support the franchise expansion to the 22-unit development. We note the Company’s response that “DES

does not approve theoretical expansion.” *Hampstead Area Water Company, Inc.*, Response to Staff Recommendation, December 16, 2019, at 1. As such, the franchise expansion area will be limited to the Kelly Green development, and we direct the Company to resubmit the boundaries of the approved franchise area within 15 days of issuance of this order.

HAWC also requested authority to charge its current tariffed rate in the new franchise area. Pursuant to RSA 378:7, the Commission shall set rates that are just and reasonable, as it has done recently for HAWC. *Hampstead Area Water Company, Inc.*, Order No. 26,195 (November 28, 2018) and *Hampstead Area Water Company, Inc.*, Order No. 26,165 (July 31, 2018). Based on Order Nos. 26,165 and 26,195, and Staff’s recommendation, we find that application of HAWC’s consolidated rate to its new customers in Kelly Green is just and reasonable.

B. Financing Approval

RSA 369:1 states a utility “may, with the approval of the commission but not otherwise, issue and sell ... notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes.” The Commission will conduct a “hearing or investigation as it may deem proper,” then authorize sufficient financing “if in its judgment the issue of such securities upon the terms proposed is consistent with the public good.” RSA 369:4. The Commission reviews, among other things, the amount of the proposed financing, the reasonableness of the terms and conditions, the proposed use of the proceeds, and the anticipated effect on customer rates. *Appeal of Easton*, 125 N.H. 205, 211-13 (1984).

The rigor of an *Easton* inquiry varies depending on the circumstances of the request. The Commission has previously noted, “certain financing related circumstances are routine, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the

intended uses and impacts of the proposed financing.” *Public Service Company of New Hampshire*, Order No. 25,050 at 14 (December 8, 2009). A routine request is one that will have “no discernable impact on rates or deleterious effect on capitalization, [and] in which the funds are to enable numerous investments appropriate in the ordinary course of utility operations.” *Id.* at 13. A routine request calls for a more limited examination of whether the “use of financing proceeds [is] in the public good without further review of possible alternative uses of the funds.” *Id.* at 16.

The Company seeks permission to enter into a promissory note with Lewis in the amount of \$22,000. The terms of the agreement include the \$1,000 per connection installment payments over time, without interest, until the 22-unit Kelly Green development is completed and occupied. This arrangement is straightforward, and the dollar amount is similar to prior Company business practice. *See Hampstead Area Water Company, Inc.*, Order No. 25,979 (January 23, 2017) (approving the financing of a \$50,000 promissory note for the provision of water service in a 50-unit condominium development).

The Company’s proposed financing appears to be routine in nature, and as such we engage in a limited *Easton* review. The promissory note allows the Company to avoid paying the total cost for the water system up front, and spreads the cost over time as the units become occupied and residents request water service. The promissory note carries no interest charge or any other burdensome terms. As such, we find the terms of the promissory note reasonable and the financing consistent with the public good, and approve its amount and terms.

Our approval of this financing does not limit or preclude the Commission from review of the prudence and used and usefulness of any specific cost financed, directly or indirectly, in a future rate case. The Commission and Staff also retain the authority under RSA 374:4 to keep

informed of HAWC's use of the promissory note, independently and apart from any RSA 378:28 review.

C. Provision of Water Service Without Authority

We acknowledge Staff's recommendation alerting the Commission to HAWC's provision of water service to occupants of Kelly Green without charge and prior to Commission franchise approval. It appears that the Company did not heed the notice provided in Order No. 26,301, when the Commission took the opportunity to "admonish HAWC" because the "Company's actions demonstrate[d] a lack of care and attention to regulatory responsibilities." *See Hampstead Area Water Company, Inc.*, Order No. 26,301 at 5 (October 22, 2019). We reiterate the duty HAWC has as a public utility to follow both New Hampshire statutes and Commission rules. With respect to this order, we specifically bring to the Company's attention RSA 374:22 which requires prior Commission authority before operating in a franchise area; and RSA 374:14, which prohibits the provision of free service. We find that HAWC has not complied with those statutory requirements, as HAWC did not seek Commission approval prior to providing service or charge customers for that service.

While we agree with Staff that HAWC's actions could subject the Company to civil penalties pursuant to RSA 365:41 and RSA 365:42, we decline at this time to pursue instituting those penalties. This order, however, puts the Company on notice that it must comply with all of its statutory duties and will be subject to penalties if HAWC is found to have violated statutes in the future.

We agree with Staff that service should not be discontinued for the current residents of Kelly Green and that they should not bear the consequences of the Company's statutory violations. We also find that HAWC should not be permitted to recover any charges from the

customers for water service taken prior to the issuance of this order and that that forgone revenue should be imputed if the Company files a rate case using a 2019 or 2020 test year.

D. Additional Company Requests and CIAC Approval

The Company made additional requests in its filing, specifically for authority to operate a water system within the expanded franchise area and permission to acquire certain assets. We find that those activities do not require Commission authority in light of the approvals granted in this order.

We also note that the Company requested approval of the receipt of certain CIAC and associated money to offset the income tax liability the Company incurs with receipt of that CIAC. We agree with Staff, and the Company in its December 16 rebuttal, and direct that Staff and the Company work to resolve the Company's requested tariff changes in relation to CIAC in Docket No. DW 19-136. We find that resolution of the Company's CIAC tax in Docket No. DW 19-136 is more efficient than disposition of the issue on a case-by-case basis within individual dockets such as this.

Based upon the foregoing, it is hereby

ORDERED *NISI* that Hampstead Area Water Company, Inc.'s request for a franchise expansion to provide water service in the Town of Sandown is **APPROVED** as limited herein to the Kelly Green development; and it is

FURTHER ORDERED, that the rates, terms, and conditions of Hampstead Area Water Company, Inc.'s consolidated tariff shall apply to the Kelly Green development, for service-rendered as of the effective date of this order; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc., is prohibited from collecting any fees or charges for service rendered prior to issuance of this order; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc., is authorized to undertake the proposed financing, under the terms and conditions contained in the Company's petition, for the purpose as outlined in its petition and supporting documents; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc., shall cause a copy of this order *nisi* to be published on its website within one business day, such publication to be documented by affidavit filed with the Commission on or before July 28, 2020; and it is

FURTHER ORDERED, that the Executive Director shall cause a copy of this order *nisi* to be published on the Commission's website within one business day; and it is

FURTHER ORDERED, that persons interested in responding to this order 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 July 31, 2020, for the Commission's consideration; and it is

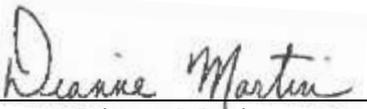
FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than August 7, 2020; and it is

FURTHER ORDERED, that this order shall be effective August 17, 2020, 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

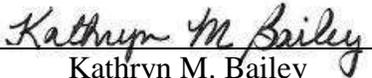
FURTHER ORDERED, that Hampstead Area Water Company, Inc., shall file an updated franchise boundary description and map with the Commission on or before August 21, 2020, to reflect the approved service area; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc., shall file a compliance tariff with the Commission on or before August 21, 2020, in accordance with N.H. Admin. R., Puc 1603.05(d).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of
July, 2020.



Dianne Martin
Chairwoman

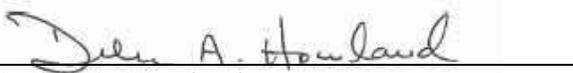


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

Service List - Docket Related

Docket#: 19-031

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