

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-020

HAMPSTEAD AREA WATER COMPANY, INC.

Request for Step II Adjustment

Order Approving Settlement on Step II Adjustment

O R D E R N O. 26,902

November 8, 2023

This order approves a settlement agreement reached between Hampstead Area Water Company, Inc. (HAWC), the NH Department of Energy (DOE), the Town of Atkinson (Atkinson) and the Town of Hampstead (Hampstead) regarding a second step adjustment to HAWC's rates. The resulting step adjustment will increase HAWC's annual revenue requirement by \$202,069. When compared against current rates, the consumption charge will increase by 8.9 percent, and a typical $\frac{3}{4}$ inch meter customer will see a 10.4 percent increase to their rates.

All docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-020.html>.

I. PROCEDURAL HISTORY

HAWC is a public water utility serving approximately 4,000 customers in Hampstead, Atkinson, and other communities in Rockingham County, New Hampshire. HAWC filed a petition for an increase in its permanent water rates on November 24, 2020. On May 9, 2022, HAWC filed, in docket DW 20-117 a settlement agreement reached with the DOE, the Office of the Consumer Advocate (OCA), Atkinson and Hampstead on permanent rates (Permanent Rates Settlement). See Hearing Exhibit 3 in Docket DW 20-117. The Permanent Rates Settlement included a

provision for two separate step adjustments to the permanent rates. The two step adjustments were intended to level out rate impacts on customers (Step I and Step II). The step increases were based on capital investments completed in 2020 and 2021. Following a public hearing on May 11, 2022, the Commission approved the Permanent Rates Settlement, and resultant rates, in Order No. 26,635 (June 2, 2022) (revised on June 10, 2022), including the provisions for Step I and Step II.

The Commission approved HAWC's Step I rate settlement on April 28, 2023. See Order No. 26,809. Intervenor Karen Steele (Ms. Steele) filed a motion for rehearing after Order No. 26,809 was issued. The Commission denied the motion to rehear on August 16, 2023. See Order 26,874.

On March 17, 2023, HAWC filed a petition for its Step II rate adjustment. The Step II rate adjustment was docketed in a separate proceeding (DW 23-020) than the prior permanent rate and Step I proceedings. On September 8, 2023, HAWC, DOE, Atkinson, and Hampstead (settling parties) filed a signed settlement on the second step adjustment (Step II Settlement). The OCA filed a letter in support of the Step II Settlement. See September 12, 2023 filing by OCA. HAWC confirmed on October 2, 2023 that all of the capital improvements it sought to recover in the Step II Adjustment were required by the southern interconnection agreement (SIA). See HAWC's October 2, 2023 response to the September 12, 2023 Procedural Order. Ms. Steele objects to the Step II Settlement. A hearing on the Step II Settlement was held on October 11, 2023.

II. SETTLEMENT ON STEP II ADJUSTMENT

The Settlement on Permanent Rates, approved by Order No. 26,635 on June 1, 2022 in Docket No. DW 20-117 proposed that the Step II adjustment be based on the following elements:

1. The costs associated with post-test year plant additions placed in service between January 1 through December 31, 2021;
2. Post-test year plant retirements; and
3. Various other operating income adjustments.

See Docket No. DW 20-117 Permanent Rate Settlement at 7. The Permanent Rate Settlement contemplated that a Step II petition could be filed any time after June 20, 2022 and that the resulting rates, subject to Commission approval, would be effective no earlier than June 16, 2023. The permanent rate settlement authorized a Step II increase not to exceed \$220,023 in HAWC's revenue requirement, utilizing a rate of return of 3.38 percent. *See Id.*

The Step II settling parties proposed a Step II revenue requirement increase of \$202,069. The settling parties further recommended a rate design for Step II similar to that approved for permanent rates. Thus, the rate design will include customer charges based on pipe size, and volumetric charges. The Step II Settlement included a table of proposed changes in charges as a result of Step II. *See Id.* and below.

Step II Settling Parties' Proposed Step II Rates (including Step I Rates)

STEP II	Step I Rate	Proposed Step II Rate	Incremental Rate (Step I to Step II)	Percentage Change from Step I
Rate Group				
Meter Charge				
5/8 inch meter	\$12.89	\$14.24	\$1.35	10.5%
3/4 inch meter	\$30.15	\$33.30	\$3.15	10.4%
1 inch meter	\$58.91	\$65.07	\$6.16	10.5%
1 ½ inch meter	\$116.42	\$128.61	\$12.19	10.5%
2 inch meter	\$150.93	\$166.73	\$15.80	10.5%
Consumption Charge (per ccf)	\$7.72	\$8.41	\$0.69	8.9%
Public Fire Protection (billed annually)				
Per hydrant ³	\$1,185.00	\$1,185.00	\$0.00	0.00%
Private Fire Protection Charge				
1 ½ inch pipe	\$2.49	\$2.49	\$0.00	0%
2 inch pipe	\$5.31	\$5.31	\$0.00	0%
3 inch pipe	\$15.43	\$15.43	\$0.00	0%
4 inch pipe	\$32.87	\$32.87	\$0.00	0%
6 inch pipe	\$95.49	\$95.49	\$0.00	0%

See Attachment C, Cost of Service Study Schedules.

The settling parties agreed that only the meter and consumption charges would be adjusted pursuant to the Step II increase, and that the private fire protection rate will not be adjusted. Because there is no change to the municipal fire protection charge, HAWC will absorb the projected revenue shortfalls totaling \$33,887. *See Id* at 9.

Finally, in accordance with the terms of the Step II Settlement, the parties agreed that HAWC would file its Step I rate case expense by August 16, 2023 and its final rate case expenses for Step II and a proposal for surcharge recovery, no later than 20 days from the date of the Commission's order approving the Step II Settlement agreement. Rate case expenses and the proposed surcharge would be subject DOE review and approval. *See Id.* Rate case expenses requested for both Step I and Step II will be reviewed in Docket No. DW 23-020. *See Order No. 26,809 at 9.*

III. WITNESS TESTIMONY AT HEARING

In support of the Settlement, HAWC called Stephen St. Cyr and Charles Lanza, and the DOE called Anthony Leone to testify at hearing.

Stephen St. Cyr (Mr. St. Cyr) is employed by St. Cyr & Associates and provides accounting, management, regulatory and tax services to its clients. *See Transcript* October 11, 2023 at 26. Mr. St. Cyr has testified multiple times in front of the Public Utilities Commission. *See Id.* Mr. St. Cyr prepared the regulatory filings in this proceeding as well as both the permanent rate hearing and the Step I hearing.

When reviewing the exhibits at hearing, Mr. St. Cyr confirmed the purpose of the multiple step increases was to avoid rate shock. *See Id.* at 30. The Step II increase related to plant additions placed in service during calendar year 2021. Furthermore, as part of the negotiated settlement for permanent rates, HAWC agreed to absorb the

revenue shortfall associated with stable municipal and fire protection charges. For Step II the revenue shortfall is \$33,887. *See Id.* at 32.

Mr. St. Cyr confirmed that HAWC was part of the SIA. The investments in infrastructure HAWC made in 2021 were contemplated as part of the SIA. Nonetheless, most of the investment in infrastructure was paid for by grants HAWC received from the New Hampshire Department of Environmental Services (DES). Mr. St. Cyr explained the mechanism of calculating depreciation and amortization of the assets which resulted in the increased O&M expenses. *See Id.* at 35.

Charles Lanza (Mr. Lanza) is the general manager of HAWC. As the general manager of HAWC Mr. Lanza is responsible for the overall operations of the company. *See Id.* at 37. Mr. Lanza was involved with the preparation of testimony and answers to data requests for HAWC in this rate case. Mr. Lanza reviewed the 2021 plant additions that are included in Step II. Those additions include the following projects.

1. Shannon Road Water Main
2. H2 Base Project
3. H2 CO Mediation
4. H2 CO Main St. PRV
5. H2 Sawyer Tank Mixer
6. East Road Water Main

See Hearing Exhibit 3 at 5. Mr. Lanza explained that the Shannon Road Water Main included installation of a 12-inch line that allowed the Town of Salem to connect their water system to HAWC's water system in Atkinson. *See Id.* at 56. The H2 Base Project was related to an upgrade to the pump station. *See Id.* at 57. The H2 Mediation Project provides boosted water pressure to a higher elevation in the Town of Atkinson. The upgrades consisted of new controls and a generator to the station on mediation lane.

See Id. The Main Street PRV consisted of upgrades to pressure reducing valves intended to provide the Town of Plaistow with consistent pressure. *See Id.* at 61. The Sawyer Tank Mixing Project upgraded an out-of-date mixer to have an active mixer for water quality purposes. *See Id.* The East Road Water Main consisted of providing a 12-inch line from Atkinson to Plaistow to serve the town of Plaistow. *See Id.* Mr. Lanza confirmed that all the projects undertaken in 2021 were completed, operational and in service. Mr. Lanza was asked to review the depreciation of the assets included in HAWC's exhibits. Mr. Lanza and Mr. St. Cyr noted that the depreciation was calculated pursuant to PUC schedules. Specifically, that the depreciation corresponded to a 40-year useful life which is the recommended life for water services provided by the PUC. *See Id.* at 63.

The DOE called utility analyst Anthony Leone (Mr. Leone) to testify. Mr. Leone assisted in the preparation of the DOE Step II Audit report. *See* Hearing Exhibit A. Mr. Leone testified that as the analyst working on this matter, he reviewed the filings in DW 20-117, he engaged in technical sessions and reviewed the books and records of HAWC. Mr. Leone was involved in drafting the settlement agreement for Step II. *See Id.* at 43.

IV. POSITION OF INTERVENOR KAREN STEELE

Karen Steele is a resident of Atkinson. She is not a customer of HAWC and is a private well owner in Atkinson. Ms. Steele's stated purpose for her intervention is to protect the groundwater resources in Atkinson. *See* October 11, 2023 Transcript at 86. As part of her evidentiary presentation Ms. Steele submitted a small, excerpted transcript from a March 19, 2019 presentation by DES concerning the SIA project. *See* Hearing Exhibit 5. Ms. Steele explained that the evidence was being submitted to demonstrate that the SIA requires HAWC to purchase water pursuant to the

Merrimack Source Development Charge (MSDC) capacity agreement prior to using ground water from the Town of Atkinson. The Commission admitted the truncated transcript, over the objection of HAWC, but reminded Ms. Steele that the scope of the October 11 hearing was limited to testimony concerning the 2021 capital additions contained in the requested Step II rate adjustment petition. Specifically, are the expenses included in Step II prudent, used and useful.

Ms. Steele expressed concern with determining which state agency is empowered to enforce the terms of the SIA agreement. See October 11, 2023 Hearing Transcript at 84. Ms. Steele testified that the capital additions included in the Step II petition were not necessary, used or useful. However, when asked to elaborate which capital addition was unnecessary, Ms. Steele testified as follows:

Q. (From Attorney Kreis) Could you testify to which of those capital projects would not have been necessary, if the Company were making the water purchases you think it is obliged to make?

A. (Ms. Steele) I cannot specify, but I do think that that would be the -- the size would be reduced and, therefore, the cost would have been reduced.

Q. Okay. I guess I'd like to ask you the same question about the incremental operating costs that form the basis of the Step II rate increase. Are there operating costs that, in your opinion, the Company could have avoided putting into rates via Step II, had it been making the water purchases you think it should be, is obliged to make?

A. Yes.

Q. Can you testify to which of those operating costs you're talking about?

A. No, I cannot right now.

See Id. at 91-92.

Ultimately, Ms. Steele was unable to provide an explanation or evidence as to why the additions were not necessary, used or useful. Ms. Steele asked that the Step II settlement be denied.

V. TESTIMONY OF MICHAEL UNGER (Water Engineer with NH Department of Environmental Services)

At the Commission's request, DES water engineer Michael Unger (Mr. Unger) appeared at the October 11, 2023 hearing to present expert testimony concerning the terms of the SIA and the MSDC Agreement. See Procedural Order issued on September 12, 2023 at 2.

Mr. Unger confirmed that DES is the State agency that could enforce the terms of the SIA. See October 11, 2023 Transcript at 77. Mr. Unger explained that he had initially told Ms. Steele that the DES did not enforce the terms of the SIA. However, upon further investigation there is a provision in the SIA that DES can enforce and DES does reserve rights under the SIA. See *Id.* Mr. Unger clarified HAWC's requirement to buy and sell 250,000 gallons a day of pipeline water prior to using water from other resources as follows:

Q. (Ms. Steele) And what is your interpretation of HAWC's requirement to buy and sell 250,000 gallons a day of pipeline water prior to using water from their other sources? Is that included in the Agreement?

A. (Mr. Unger) Yes. So, the Agreement, there's two parts to the capacity requirements. So, that's the maximum allowed usage. And, then, there's also a minimum requirement. And, you know, in this case, those numbers are the same, but they're calculated over different time periods.

So that the maximum usage is calculated using Manchester Water Works of their MSDC, which is "Merrimack Source Development Charge", and that's based on a 60-day average. So, that's the maximum, on a rolling average.

And, then, the minimum requirement came out of negotiations preparing the Agreement, and that was something that was being pushed for by the suppliers, Manchester Water Works, as the producer, and then the Town of Derry, which is wheeling water, but isn't using regional water as part of the Agreement. But they were looking for a certain guarantee or assurance of revenue in order to participate in the Project. And, so, as a part of that, all the parties agreed to this. And that's a 60-day -- mean, I'm sorry, a six-month average on a minimum usage.

And, so, in theory, it would be the kind of case where you could just set a valve and take that amount of water on a continuous basis. In practice, it's more difficult than that, because both the Town of Salem and Hampstead Area Water Company have their own sources. And, so, they're trying to balance operations and water quality across the whole system, and also manage water level in their tanks, to turn them over and maintain water quality. And, so, it's really operational decisions that they need to make of

how much water to take at any given time, with the intent being, at the end of the six-month period, that they have used that minimum requirement.

See Id. at 78-79

VI. COMMISSION ANALYSIS

RSA 378:7 authorizes the Commission to establish just and reasonable rates for a utility after conducting a hearing. In determining just and reasonable rates, the Commission must balance the consumers' interest in paying rates no higher than are required with the investors' interest in obtaining a reasonable return on investment. *Hampstead Area Water Company*, DW 05-112, Order No. 24,734 at 53-54 (citing *Eastman Sewer Co.*, 138 NH 221, 225 (1994)). The utility seeking to increase rates bears the burden of proving the necessity of the increase. RSA 378:8.

The Commission has approved step adjustments for limited use as a mechanism between full rate cases to allow a utility to collect additional revenue on investments that are non-revenue producing and are made to improve safe and reliable service. *See Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty*, Order No. 26,661 (July 29, 2022) at 4, citing *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 26,504 (July 30, 2021) at 5. Step adjustments are generally limited in scope and permit recovery for investments similar to those that have been reviewed in the underlying rate case that established the step adjustment provision. *Id.* Utilities have the burden of showing that capital investments included in a step adjustment are prudent, in service, and used and useful. *Id.*

Accordingly, HAWC has the burden to show that the step adjustment presented in this proceeding incorporates only investments that were placed in service and were used and useful in the applicable test year, and that the rates proposed to collect the revenue requirement associated with those investments are calculated accurately.

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, Order No. 26,494 (July 1, 2021) at 5-6.

Informal disposition by stipulation may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to Puc 203.20(b), the Commission shall approve the disposition of a contested case by stipulation “if it determines that the result is just and reasonable and serves the public interest.” Nonetheless, the Commission cannot approve a settlement without independently determining that the result comports with applicable standards.

Aquarion Water Company of New Hampshire, Inc., Order No. 26,659 (July 29, 2022) at 10 (citing *Pennichuck Water Works*, Order No. 26,070 (Nov. 7, 2017) at 14.

Pursuant to RSAs 374:2, 378:7, and 378:28, the Commission may approve permanent rates if it finds they are just and reasonable and reflect capital improvements that are found to be prudent, used, and useful. In determining whether rates are just and reasonable, the Commission acts as arbiter between the interests of customers and the regulated utility. *See* RSA 363:17-a.

The Step II settlement includes a review of assets put into service in 2021. HAWC confirmed that all assets put into service were placed into service pursuant to the terms of the SIA project. The assets include a total of six projects. Of the 6 projects, HAWC received all but \$12,372 of the costs in contribution in aid of construction (CIAC). *See* Hearing Exhibit 3 at 2. The revenue requirement of \$202,069 was represented by the following line items:

	Shannon Road Water Main	H2 Base Project	H2 Meditation Project	Main St. PRV Project	Sawyer Tank Mixer Project	East Road Water Main	Retirements		
Increase in Net Operating Income Requirement									\$ 3,635
Less: Revenue from Water for Resale	-	-	-			-	-		(175,180)
Less: Revenue from New Customers	-	-	-			-	-		(50,524)
Add: Net Increase/ (Decrease) to O&M Expense	-	-	-			-			399,986
Add: Annual Depreciation Expense	13,811	71,099	18,128	17,240	1,306	3,652	-		125,235
Less: Annual Amortization of CIAC	(13,811)	(70,507)	(18,128)	(17,240)	(1,306)	(3,652)	-		(124,643)
Add: Annual Amortization of CIAC Tax	-	-	-	-	-	-	-		-
Add: Annual Property Tax Expense	5,858	17,715	1,737	1,925	502	1,540	-		29,277
Less: 2019 Depr Exp on 2019 Retired Assets								(9,637)	(9,637)
Add: 2019 Amort of CIAC on 2019 Retired Assets								3,037	3,037
*=Net Change to Rate Base * Additional Equity Gross up Factor									883
Increase in Pre Income Tax Revenue Requirement	\$ 5,858	\$ 18,307	\$ 1,737	\$ 1,925	\$ 502	\$ 1,540	\$ (6,600)		\$ 202,069

See *Id.*

The decrease in revenue requirement from the anticipated revenue requirement cap of \$220,023 was due to a change in the tax code which did not require HAWC to pay a CIAC tax. See October 11, 2023 Transcript at 46 (Testimony of Anthony Leone explaining the changes in the NH Tax Code concerning CIAC contributions).

Each of the settling parties testified at hearing in support of the Settlement provisions as just and reasonable. Although Ms. Steele's concerns are sincere, whether HAWC is abiding by the terms of the SIA by using ground water prior to purchasing water, this proceeding is not a venue to adjudicate those concerns. Therefore, although the Commission appreciates Ms. Steele's participation, her testimony concerning the lack of prudence of the investments is not persuasive. She presented no evidence to support her proposition that the Step II additions to capital in 2021 were not prudent, used, and useful.

As a result of the permanent rate change, the Step I adjustment and the Step II adjustment rates change for HAWC customers as follows:

Rate Component	Permanent	Step I	Step II
Monthly Charge			
5/8-inch meter	\$11.92	\$12.89	\$14.24
3/4-inch meter	\$27.87	\$30.15	\$33.30
1-inch meter	\$54.45	\$58.91	\$65.07
1 ½-inch meter	\$107.61	\$116.42	\$128.61
2-inch meter	\$139.50	\$150.91	\$166.73
Consumption Charge (volumetric rate per Ccf)*	\$6.90	\$7.72	\$8.41

* Calculated as total costs to be recovered from both steps 1 and 2, unitized by consumption.

Based on the record, we find the revenue requirement presented in the Step II Settlement to be just and reasonable, as required by RSA 378:7. Through its testimony and the discovery responses incorporated in DOE's audit report, HAWC has demonstrated that the proposed Step II adjustment to permanent rates is necessary and accurately reflects investments that were placed in service and used and useful in 2021, and certain adjustments to operating income as presented in the Settlement to resolve audit issues identified in DOE's Final Audit Report.

Accordingly, we find that HAWC has met its burden of proving the necessity of the increased rates through the proposed step adjustment under RSA 378:8. We thus find that the rates proposed to collect the revenue requirement associated with the identified 2021 investments are just and reasonable. Therefore, we approve the Step II adjustment as presented in the Step II Settlement and supported by testimony provided by the Settling Parties at the October 11 hearing.

Pursuant to N.H. Admin. R. Puc 1906.01 the Commission authorized recovery of rate case expenses in the amount of \$322,775.30. *See* Order No. 26,718 (November 3, 2022). The Step II settlement agreement included a provision concerning potential recovery of additional rate case expenses incurred by HAWC in the preparation and litigation of both Step I and Step II. *See* Hearing Exhibit 1 at 9 & 10. At the time of the hearing on Step I the parties had requested that the issue of additional rate case

expenses for Step I and Step II be deferred to the Step II proceeding. *See* April 12, 2023 Hearing Transcript at 90 & 106 & 107. The resulting Step I order memorialized the parties agreement to resolve the issue of additional rate case expenses, if due, in the Step II docket. *See* Order No. 26,809 (April 28, 2023) at 9. At the October 11, 2023 hearing, HAWC indicated that it would be pursuing additional expenses related to presentation of Step I and Step II rate increases. *See* October 11, 2023 Hearing Transcript.

N.H. Admin. R. PUC 1905.05 defines “Rate case expenses” as those non-recurring expenses incurred by a utility in the preparation or presentation of a full rate case proceeding before the commission, necessary for the conduct of the rate case. The Commission notes that the permanent rate settlement and resulting order did not provide for, or anticipate, additional rate case expenses to be submitted and approved for the two step proceedings. Further, it is not customary for the Commission to approve rate case expenses for step proceedings. The Commission requests that within thirty days of issuance of this order, HAWC submit an estimate of the Step I and Step II expenses for which it seeks recovery. Further, we request all settling parties file written legal briefs concerning the legal basis and any precedent for requesting recovery of expenses relating to adjustments.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement regarding a Step II adjustment to the Company's revenue requirement of \$202,069 is **APPROVED**; and it is

FURTHER ORDERED, that the rates resulting from the Step II adjustment and described in this order are **APPROVED** effective as of the date of this order; and it is


FURTHER ORDERED, that, pursuant to N.H. Code Admin. Rules Puc 1603, HAWC shall submit properly annotated revised tariff pages within 15 days of the date of this order; and it is

FURTHER ORDERED, that DOE shall review the annotated revised tariff pages and submit to the Commission its assessment of the annotated changes within 10 days of the Company's submission of the revised tariff pages; and it is

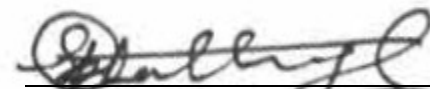
FURTHER ORDERED, that HAWC is required to file its rate case expenses related to Step I and Step II together with supporting documentation within 30 days of the date of this order; and it is

FURTHER ORDERED, that HAWC and the Settling parties are required to file written legal briefs with the Commission concerning the legal basis and any precedent for requesting recovery of rate case expenses relating to Step I and Step II adjustments within 30 days of the date of this order.

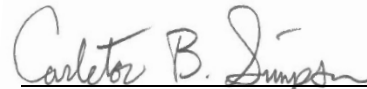
By order of the Public Utilities Commission of New Hampshire this eighth day of November, 2023.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-020

Printed: 11/8/2023

Email Addresses

ClerksOffice@puc.nh.gov
japple@atkinson-nh.gov
aaugeri@lewisbuilders.com
douglas.brogan@gmail.com
bethc@atkinson-nh.gov
Energy-Litigation@energy.nh.gov
thomas.c.frantz@energy.nh.gov
donald.m.kreis@oca.nh.gov
jayson.p.laflamme@energy.nh.gov
charlie@hampsteadwater.com
anthony.j.leone@energy.nh.gov
harold@lewisbuilders.com
chris@atkinsoncc.com
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
mary.e.schwarzer@energy.nh.gov
Robert.R.Scott@des.nh.gov
sspyveewater@gmail.com
stephenpstcyr@yahoo.com
karen.sue.steele@gmail.com
john@lewisbuilders.com
htombarello@lewisbuilders.com
rawlew04@comcast.net
Lwarnock@hampsteadnh.us