

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 18-138

HAMPSTEAD AREA WATER COMPANY, INC.

**Petition for Approval of Drinking and Groundwater Trust Fund Financing
And Step Increase**

Order Approving Financing

O R D E R N O. 26,230

March 29, 2019

This order approves a financing request by Hampstead Area Water Company, Inc., and defers consideration of cost recovery until a general rate case is filed later this year.

I. PROCEDURAL HISTORY

Hampstead Area Water Company, Inc. (HAWC or the Company), is a regulated public utility as defined by RSAs 362:2 and 362:4, and provides water service to approximately 3,660 customers in Atkinson, Chester, Danville, East Kingston, Fremont, Hampstead, Kingston, Newton, Nottingham, Plaistow, Salem, Sandown, and Strafford.

On September 4, 2018, HAWC petitioned the Commission for authority to borrow up to \$1,020,000 from the Drinking Water and Groundwater Trust Fund (DWGTF). The DWGTF is administered by the New Hampshire Department of Environmental Services (DES). HAWC proposes to use the funds to build a 1,000,000 gallon water tank (Tank Project) as part of the Southern New Hampshire Regional Water Project. HAWC also requested a step adjustment to pay the debt service on the loan and earn a reasonable rate of return on its invested capital. The Company sought expedited approval to qualify for low-interest DWGTF financing which is available for a limited time.

On September 24, 2018, the Commission issued an Order of Notice, scheduling an October 15 Prehearing Conference followed by a technical session. The Office of the Consumer Advocate (OCA) filed its letter of participation on the following day. The Prehearing Conference and technical session were held on October 15 and, as a result of the technical session, Commission Staff, the OCA, and HAWC (collectively, the Settling Parties) agreed to a proposed procedural schedule, that was later approved by the Commission. The procedural schedule included an additional December 5 technical session, at which the Settling Parties reached a tentative settlement. A Settlement Agreement (Agreement) dated February 4, 2019, and an accompanying Assented to Motion to Approve Settlement Agreement, was filed on February 8.

On March 6, 2019, DES filed a letter supporting HAWC's financing request and describing the benefits of the Tank Project to both HAWC customers and other customers that will be affected by the Southern New Hampshire Regional Water Project. Staff filed an additional report on March 19, 2019, describing the potential effect of the financing on HAWC's capital structure. On March 27, 2019, the Company filed a letter detailing, among other things, HAWC's shareholder's commitment to contributing at least \$750,000 to the Company over the next three years.

The petition and subsequent docket filings, other than any information for which confidential treatment has been requested or granted by the Commission, are posted at <http://www.puc.state.nh.us/Regulatory/Docketbk/2018/18-138.html>.

II. PROPOSED FINANCING

A. Description and Purpose

The proposed financing will fund part of the construction of the Tank Project to be located in Atkinson. The tank will become part of HAWC's Atkinson and Hampstead Core System. The Tank Project is part of the much larger Southern New Hampshire Regional Water Project, supported by the DES, to "transmit water supply from Manchester Water Works to meet domestic water demands in the towns of Windham, Salem, Atkinson, Hampstead, and Plaistow." *See Agreement Attachment A.* The Tank Project will provide safe, reliable, and adequate drinking water to areas in southern New Hampshire, including the Town of Plaistow.

The total estimated cost of the Tank Project is \$2,150,000, which includes engineering, legal, tank construction, and appurtenant infrastructure costs. Due to a change in the federal tax law concerning Contributions in Aid of Construction (CIAC), the additional federal tax impact is also included in the estimated cost of the Tank Project. Construction of the tank is projected to commence during spring 2019 and is expected to be substantially completed by fall 2019.

On November 5, 2018, the DWGTF Advisory Commission voted to authorize funding for the Tank Project. The DWGTF-authorized funding consists of a grant of up to \$1,130,000, covering that portion of the project which will benefit Plaistow; and a loan of up to \$1,020,000, covering that portion of the project which will benefit HAWC's customers.

B. Financing Terms

While loan documentation is currently unavailable, DES confirmed: (1) HAWC will borrow up to \$1,020,000; (2) the loan will mature 30 years from the date of closing; (3) the annual interest rate will be 3.38 percent; (4) during construction, interest will accrue at the rate of 1.00 percent per annum, and after substantial completion, interest will begin to accrue at the

approved interest rate; (5) the first interest payment on the borrowed funds will be due six months following substantial completion, followed by six monthly, interest-only payments; and (6) monthly principal and interest payments will commence one year following substantial completion.

C. Anticipated Revenue Requirement, Rate Impact, and Effect on Capitalization

The Company estimates a revenue requirement increase of approximately \$97,003, which could result in a 4.94 percent increase to customer rates. The Company also estimates that this revenue increase could result in increased customer consumption charges, from \$6.11 per one hundred cubic feet (ccf) of water to \$6.51 per ccf.

As detailed by Staff in its March 19, 2019, filing, Staff estimates that, with approval of the instant financing and full withdrawal of the LOC, HAWC's debt capitalization could increase from 62 percent to 72 percent, and its equity capitalization could decrease from 38 percent to 28 percent.

III. SETTLEMENT AGREEMENT

The Agreement contains five terms:

1. The financing is a necessary investment in the ordinary course of HAWC's operation as a water utility; thus the Commission should find it is a routine financing, evidenced by the non-discernable, estimated 4.94 percent increase in revenue requirement and its non-deleterious effect on capitalization.
2. The Commission should find that the financing is reasonable and in the public good because the Tank Project will enable HAWC to provide safe, adequate, and reliable water service to HAWC and non-HAWC customers as part of the larger Southern New Hampshire Project.

3. HAWC will submit to the Commission the final terms of the financing as soon as they are available. If the submitted financing terms vary materially from those approved in this order, such new or modified terms and conditions will be subject to Commission approval.
4. HAWC will withdraw its requested step increase contained in its Petition and, in consideration, HAWC may file a full rate proceeding in 2019 and may use a split test year for a 12-month period ending in 2019. The Tank Project must be in service as of the date of final resolution of the future rate proceeding.
5. The Settling Parties request that the Commission approve the Agreement, enabling HAWC to secure the funds and commence construction.

The Settling Parties also agree that the Commission is not making a prudency determination at this time, nor is the Commission deciding whether the cost of the financing should be recovered from ratepayers.

IV. COMMISSION ANALYSIS

RSA 369:1 states that 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 such “hearing or investigation as it may deem proper,” then authorize the financing “if in its judgment the issue of such securities upon the terms proposed is consistent with the public good.” RSA 369:4. Analysis of the public good involves looking beyond the actual terms of the proposed financing to the use of the funds and the effect on rates to ensure the public good is protected. *Appeal of Easton*, 125 N.H. 205, 211 (1984).

“[C]ertain 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.” *Pennichuck East Utility, Inc.*, Order No. 26,189 at 5 (November 6, 2018). “A routine financing request is one that will have no discernable impact on rates or deleterious effect on capitalization, and in which the funds are to enable appropriate investments in the ordinary course of utility operations.” *West Swanzey Water Company, Inc.*, Order No. 26,133 at 3 (May 10, 2018). If it is determined that the request is routine, the Commission will use the more limited examination of whether the use of the financing proceeds is in the public good without further review of possible alternative uses of the funds. *Id.*

Unless precluded by law, 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 N.H. Code Admin. Rules Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation “if it determines that the result is just and reasonable and serves the public interest.” The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Pennichuck East Utility, Inc.*, Order No. 26,179 at 13 (October 4, 2018). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.* at 13-14.

In this case, the Settling Parties request that the Commission find that the financing is routine and conduct a limited analysis concerning the public good of the proposed borrowing.

As noted above, the Commission is not bound by the terms of the Settlement and must make an independent analysis under applicable legal standards. Given both the potential rate impacts and our heightened concern about HAWC's increasing debt portion of its capital structure through recent financings, we cannot find that this financing is routine. HAWC's capital structure could shift in light of previous Commission orders approving HAWC's return on equity (ROE) and a line of credit (LOC). *See Hampstead Area Water Company, Inc.*, Order No. 26,195 (November 28, 2018) (approving an ROE of 9.95 percent); *Hampstead Area Water Company, Inc.*, Order No. 26,218 (February 1, 2019) (authorizing HAWC to obtain a \$1,000,000 LOC). We also note that HAWC expects to be involved in several additional components of the Southern New Hampshire Regional Water Project, which may require additional financing. Settlement Agreement of February 8, 2019, Attachment A at 6, 9-10. When we consider the Company's past, present, and potential future financings, we must closely monitor the current and potential impact on HAWC's capital structure. That requires the Commission to conduct a more comprehensive review of the public good. RSA 369:1 and :4.

The "proper application of *Easton* is determined by the context of the facts and issues of the case." *Public Service Company of New Hampshire*, Order No. 25,050 at 14 (December 8, 2009). As the Court in *Easton* stated:

We have held that the primary concern of the commission in ascertaining the public interest for purposes of capitalization is the protection of the consuming public. On the other hand, it has never been the position of this court that a utility completely surrenders its right to manage its own affairs merely by devoting its private business to a public use.

Appeal of Easton at 210-211 (quotations and citations omitted). The Court further stated "the commission may approve all, none or a part of the securities sought, in accordance with its findings of what the public good requires." *Id.* at 210 (quotations and citations omitted).

Easton requires that the Commission make a factual analysis when examining the public good of a financing. That analysis involves a balancing of consumer interests with HAWC's right to manage its water business. In considering HAWC's management decisions in this case, we must further consider that HAWC is proposing to construct the Tank Project, which has been approved for both grant and loan support by the DWGTF Advisory Committee pursuant to RSA 485-F. The Tank Project has also received general support, engineering review, and regulatory approval from DES.

State law requires DES to implement a comprehensive drinking water protection program. *See RSA 485:1, II.* DES's duties in implementing such a program include, among others, monitoring water quality for water systems, providing technical assistance to water system operators, and approving the design of proposed water systems and system upgrades. *Id.* In the case of HAWC, DES, on behalf of the DWGTF and using its expertise as the agency charged with "engineering review" and "protection of the public health" with respect to drinking water distribution and storage (RSA 485:8, I and II), has developed a regional plan for improving water quality and supply for a number of towns in southern New Hampshire, including towns in which HAWC provides service (Hampstead and Atkinson) and towns surrounding HAWC's service territory (Windham, Salem, and Plaistow).

We give substantial deference to our sister agency's expertise in determining the need for, and design of, the Tank Project to meet the present and future requirements of HAWC's customers as well as other customers in southern New Hampshire. In its March 6 letter, DES described various ways in which the Tank Project would improve HAWC's ability to provide safe and reliable service to its customers. According to DES, the Tank Project includes numerous benefits: more stable water pressures in the HAWC system; reduced wear and tear on

pumps and electrical equipment; storage for peak demands; and increased fire storage and fire flow rates. In addition, DES stated that HAWC customers would see increased reliability of water supply and improved water quality. DES also pointed out that half of the costs of the Tank Project would be paid for by grant, and that HAWC's operation and maintenance costs, as well as bulk water purchase costs, could be partially offset through wholesale water rates charged to the Plaistow water system.

We find that although the Tank Project will raise the rates of HAWC's existing customers and will further increase the Company's debt, this financing is nonetheless for the public good. The Tank Project is a necessary investment to support safe and adequate water service.

In our examination of the financing and its fulfillment of the public good, we must consider customer need for safe and adequate drinking water against their need for the lowest possible rates. We approve HAWC's request to secure the funds under the DWGTF loan program. Our approval of the DWGTF loan does not foreclose or limit our review in a future rate case of the prudence, use, and usefulness of any specific project directly or indirectly financed by this transaction. The Commission and Staff also retain the authority under RSA 374:4 to keep informed of HAWC's use of the financing independently and apart from any RSA 378:28 review.

We direct HAWC to submit the final terms of the financing as soon as they are available, and note that the terms and conditions are subject to further Commission approval if they vary materially from those approved in this order. Although our finding that the financing is not routine precludes us from approving the Agreement as filed, we approve the financing and HAWC's filing of a full rate case in 2019 with a split test year in lieu of its request for a step increase.

We repeat our concerns about the need for HAWC's investor to make meaningful and appropriate equity infusions to begin to balance the Company's capital structure, consistent with its March 27 filing. *See Order No. 26,195 at 7; Order No. 26,218 at 4-5.*

Based upon the foregoing, it is hereby

ORDERED, that HAWC's request to borrow up to \$1,020,000 from the Drinking Water and Groundwater Trust Fund on the terms described in this order is APPROVED; and it is

FURTHER ORDERED, that HAWC must submit the final terms of the financing to the Commission as soon as they are available, and that those terms and conditions are subject to further Commission approval if they vary materially from those terms set forth above; and it is

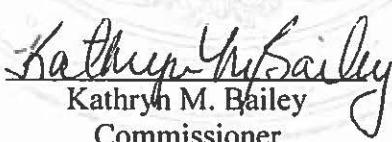
FURTHER ORDERED, that the motion to approve the settlement agreement is DENIED; and it is

FURTHER ORDERED, that HAWC's withdrawal of its request for a step increase is APPROVED.

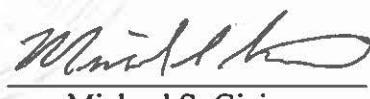
By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March, 2019.



Martin P. Honigberg
Chairman

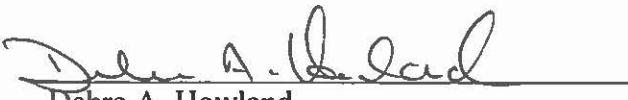


Kathryn M. Bailey
Commissioner



Michael S. Gaiomo
Commissioner

Attested by:



Debra A. Howland
Executive Director