

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 19-011

HAMPSTEAD AREA WATER COMPANY, INC.

Petition to Expand Franchise in the Town of Salem

Order Approving Franchise Expansion

ORDER NO. 26,301

October 22, 2019

This order approves an expansion of Hampstead Area Water Company's franchise to an area in the Town of Salem to serve the Tisdale Trailer Park.

I. PROCEDURAL HISTORY

On August 10, 2018, Hampstead Area Water Company, Inc. (HAWC or the Company), petitioned for, among other things, authority to provide service to the Tisdale Trailer Park (Tisdale) in Salem on an emergency basis. Due to contamination in the well that was serving Tisdale, the New Hampshire Department of Environmental Services (DES) requested HAWC provide service to Tisdale's 58 mobile home units.

The Commission found that special circumstances existed, and approved a contract for bulk water supply pursuant to RSA 378:18. *Hampstead Area Water Company*, Order No. 26,174 at 4 (September 14, 2018). The approval was temporary until November 1, 2018, and contingent upon the ability of Tisdale's owner to rehabilitate the well. *Id.* at 5. Tisdale's owner determined rehabilitation was not feasible, and requested that HAWC provide water on a permanent basis. The Commission extended approval of the bulk water supply contract until such time as this docket is resolved. Secretarial Letter of April 26, 2019 (Docket No. DW 18-128).

On January 18, 2019, HAWC petitioned to expand its franchise to permanently serve Tisdale. A Prehearing Conference was held on March 12, followed by a technical session. Staff

filed its recommendation on June 27, 2019, to which HAWC filed its response on July 3. The Company's petition and subsequent docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2019/19-011.html>.

II. POSITIONS

A. HAWC

HAWC petitioned to expand its franchise area to serve Tisdale. HAWC also sought authority to: (1) add Tisdale to its Lancaster Farm system; (2) acquire certain assets, as contributions in the aid of construction (CIAC), upon completion of the extension; and (3) charge the Company's existing consolidated rate to the proposed area.

According to HAWC's petition, the Hampstead Area Water Service Company (HAWSCO), a division of HAWC's parent company, Lewis Builders Development, Inc., would install a four-inch water main connecting HAWC's Lancaster Farm development to a meter pit, containing a two-inch meter, located at Tisdale's property line. Tisdale's owner would pay HAWSCO for the work and, in turn, contribute the new assets to HAWC.

B. Staff

Staff recommended approval of the franchise expansion. Staff noted that HAWC has been providing water service as a regulated public utility since the 1970s and has grown to serve approximately 3,750 customers. Staff stated that, based on that experience and the information provided by HAWC, the Company possesses the technical, managerial, financial, legal, and other capabilities to provide service to Tisdale.

In its recommendation, Staff further noted that HAWC received DES approval to provide service. As such, Staff argued that the Commission should find expansion of the franchise would be in the public good, pursuant to RSA 374:22 and RSA 374:26. Staff also recommended

that the Commission allow the Company to apply its existing consolidated rates to Tisdale, as those rates were previously found to be just and reasonable by the Commission. Staff recommended that the Commission find application of those consolidated rates to Tisdale just and reasonable pursuant to RSA 378:7.¹

Staff also indicated that HAWC was not following the terms of the bulk water supply contract approved by Order No. 26,174 (Order). Staff noted that HAWC has been charging Tisdale for a two-inch meter at \$100 per month. The approved special contract allowed for a one-inch meter at \$30 a month. Staff contended that the Commission was not notified of this amendment, and that the amendment was not approved. Staff recommended the Commission order HAWC to issue a credit to Tisdale for the amount charged in excess of the approved amount, which was approximately \$452 as of June 2019.

C. HAWC's July 3 Rebuttal to Staff's Recommendation

HAWC agreed with nearly all of Staff's recommendations, but disagreed that it had not followed the terms of the special contract approved by the Order. The Company argued that it followed the terms of the Order by charging the one-inch meter rate when it provided a temporary, aboveground connection to Tisdale. HAWC, however, argued it was forced to install the permanent underground connection, requiring a two-inch meter, to prevent freezing, because the franchise petition was not finalized before winter. The Company acknowledged the two-inch meter was not mentioned in its original petition in Docket No. DW 18-128, but argued the

¹ Staff noted that the service provided by HAWC to Tisdale's Owner, and in turn, by Tisdale's Owner to the Tisdale trailer park residents would be pass-through in nature. The cost of water would be included in the residents' rental fees. Staff also noted that, while Tisdale's owner would maintain ownership of the water distribution system past the two-inch meter, the water would not be treated by Tisdale's owner. Staff further stated that the Commission has historically treated mobile home parks as outside of its jurisdiction when a pass-through of utility services exists. *State Line Plaza Water Company*, Order No. 24,563 at 4 (December 15, 2005). While Tisdale's status as a utility was not at issue, Staff contended that the underlying Tisdale system is not a regulated utility and is outside the Commission jurisdiction pursuant to RSA 362:2.

Commission was on notice of its existence as it was shown in the underlying plans submitted with the Company's testimony.

HAWC argued that increasing the charge to Tisdale for a two-inch meter did not require Commission approval because the Company charged its two-inch meter tariffed rate and the size of the meter is determined by the Company per its tariff, page 26 (B)(1).

III. 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 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. *Town of Derry*, Order No. 26,255 at 8 (June 7, 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 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 service to the proposed franchise expansion area in Salem. We further find, based on Staff's recommendation,

that HAWC has satisfied the requirements of DES under RSA 374:22, III for suitability and availability of supply. Accordingly, we find that granting a franchise to provide water service to Tisdale is for the public good.

HAWC also requested authority to charge its current tariffed rates 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 consolidated rates to Tisdale's owner is just and reasonable.

We acknowledge Staff's recommendation alerting us to HAWC's current charge to Tisdale for a two-inch meter at \$100 per month. We further acknowledge that the special contract previously approved in the Order provided approval for a one-inch meter service at \$30 per month, a \$70 per month difference in the rates approved by the special contract. Staff recommended that HAWC credit Tisdale for the difference. Tisdale has been receiving the benefit of a two-inch meter since its installation and has paid the tariffed rate for that meter. Thus, Tisdale has been paying for the service it received.

We admonish HAWC, however, for not seeking Commission approval of an amendment to its special contract. The Order clearly states it is an approval of a special contract, allowing for a one-inch meter at HAWC's monthly tariffed rate. The Commission has "an obligation to ensure that special contracts pursuant to RSA 378:18, and any amendments thereto, are 'just and consistent with the public interest.'" *Liberty Utilities (EnergyNorth Natural Gas)*, Order No. 26,002 at 4 (April 6, 2017). Pursuant to N.H. Admin. Rules Puc 1606.03(f), amendments to special contracts shall not become effective until approved by the Commission. The Company's actions demonstrate a lack of care and attention to regulatory responsibilities. "Amendments to

special contracts must be submitted well in advance of the amendments taking effect” and we expect HAWC to put procedures in place to ensure compliance going forward. Order No. 26,002 at 4.

RSA 374:26 authorizes the Commission to grant request for franchise authority without a hearing “when all interested parties are in agreement.” The Prehearing Conference was duly noticed and held on March 12, and there were no intervenors in this docket. The parties are all in agreement that HAWC should provide service in the proposed franchise area.

Lastly, we recognize that in its original petition, HAWC requested approval of a contract between HAWC, HAWSCO, and Tisdale under which HAWC would acquire assets constructed by HAWSCO and paid for by Tisdale. Hampstead Area Water Company, Inc. Petition for Approval of Expansion of Franchise, January 18, 2019, at 1. Staff, however, did not include a recommendation for contract approval in its filing, nor did HAWC support a request for such approval. Thus, we will not approve any contracts at this time.

We note that the proposed contract provides for Tisdale’s Owner to pay HAWSCO for the tax associated with HAWC’s receipt of a contribution in aid of construction (CIAC). Staff Recommendation, June 27, 2019, at 4. We remind HAWC that its tariff does not allow the Company to charge a customer for the tax associated with the receipt of CIAC. That amount, furthermore, should not be paid to HAWSCO, a non-Commission regulated entity. We direct HAWC to work with Staff in addressing the payment of the tax liability associated with the receipts of CIAC, if necessary, in a separate docket.

Based upon the foregoing, it is hereby

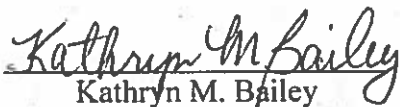
ORDERED that HAWC’s request for a franchise to provide water service to the Tisdale Trailer Park in the Town of Salem is **APPROVED**; and it is

FURTHER ORDERED, that the rates, terms, and conditions of HAWC's consolidated tariffs shall apply to the Tisdale Trailer Park; and it is

FURTHER ORDERED, that HAWC shall file tariff pages, pursuant to this order, 15 days after the effective date below; and it is

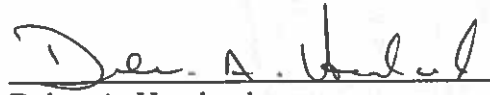
FURTHER ORDERED, that the special contract approved in Order No. 26,174 will be terminated and Docket No. DW 18-128 will be closed.

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


Kathryn M. Bailey
Commissioner


Michael S. Giaimo
Commissioner

Attested by:


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