

THE STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
Meredith A. Hatfield

ASSISTANT CONSUMER ADVOCATE
Kenneth E. Traum



TDD Access: Relay NH
1-800-735-2964
Tel. (603) 271-1172
FAX No. 271-1177
Website:
www.oca.nh.gov

OFFICE OF THE CONSUMER ADVOCATE
21 S. FRUIT ST., SUITE 18
CONCORD, NEW HAMPSHIRE 03301-2429



June 25, 2009

Debra Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-7319

RE: DW 08-073 Pennichuck Water Works, Inc. – Petition for Permanent Rates

Dear Ms. Howland:

The purpose of this letter is to provide the OCA’s response to Staff’s recommendation to the Commission dated June 15, 2009 in the above-referenced docket. Staff’s recommendation concerned the proposed Step Adjustment included in the settlement agreement filed by Staff and PWW, which was presented at the final hearing in the case on May 19, 2009. The OCA respectfully requests that the Commission reject Staff’s recommendation to the extent that it improperly seeks to expand the scope of the relief requested in the Company’s petition, as well as in the proposed settlement agreement.

The OCA understood that the step adjustment was intended, in pertinent part, to compensate PWW for additions to plant completed in 2008. This is expressly stated in the settlement agreement filed by Staff and the Company, now pending before the Commission. *See* Settlement Agreement, p. 4, paragraph C (“The settling parties recognize PWW has expanded its rate base with certain capital additions placed in service in 2008.”). Yet, Staff’s recommendation includes recovery for additions completed in 2009.

The 2008 limit is also referenced numerous times in the Company’s original filing. *See e.g.*, Prefiled testimony of Donald L. Ware, dated June 2008, p. 6, line 10, through p. 8, line 7 (describing capital investment in the Water Treatment plant “through the remainder of 2008”); and p. 13, line 3, through p. 21, line 11 (describing “non revenue producing capital projects that the Company will be completing by the end of 2008”); *see also* Prefiled testimony of Bonalyn Hartley, dated June 2008, p. 26, line 21, through p. 27, line 1 (“As explained in both Mr. Ware's and Mr. Patterson's testimony, the Company is requesting a step increase to recognize the major

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upgrades to the Treatment Plant and other additions totaling \$14.9 million during 2008 becoming used and useful by December 31, 2008”); p. 30, lines 16-18 (The plant for the first step was constructed in 2007 and 2008 and became operational by May 31, 2008. The plant for the second step will be constructed beginning June 1, 2008 and become operational by November 30, 2008”); and p. 31, lines 15-17 (all of the pro forma capital additions included in the pro form adjusted rate base for the step increase[s will] be used and useful on May 31, 2008 and November 30, 2008”).

Although the Company filed supplemental testimony to amend its proposed second step adjustment, this filing did not modify the Company’s original proposal to recover through the step adjustments only capital investments completed by the end of 2008. *See, e.g.*, Amended Testimony of Bonalyn J. Hartley (Clean Version), dated September p. 27, lines 3-6. Even though the Company made a reference at the final hearing that these capital additions “were to be ... completed near the beginning of 2009,” this statement is made in the context of other statements that indicate a 2008 limit for the step adjustment. *See* Transcript of final hearing, dated May 19, 2009, p. 16, lines 7-16. This statement also conflicts with the Company’s previous testimony as well as the express terms of the proposed settlement agreement.

As stated earlier, Staff’s recommendation seeks to allow the Company to recover the costs of capital additions completed in 2009. Not including the amounts booked on January 1, 2009 (\$1,286,243.70), the sum of the projects booked in March and April 2009 is \$2,468,860. *See* revised Schedule 3, Attachment A, and Schedule 3, Attachment A, Exhibit 2 attached to Staff’s recommendation.¹ The audit report attached to Staff’s recommendation also appears to expand the scope of recovery to include additions completed and placed in service in 2009. *See, e.g.*, Final Audit Report, dated June 3, 2009, p. 1 (“The PUC Audit Staff (Audit) reviewed Pennichuck Water Works (PWW) Water Treatment Plant (WTP) invoices associated with contract #4 that were placed in service through the end of April 2009” and “Step 2 additions are projects considered used and useful through March 31, 2009.”). This expanded scope, and the incorporation of 2009 capital additions into the proposed step adjustment, strike the OCA as inconsistent with the proposed settlement agreement as well as the Company’s filings. Further, given its timing (*i.e.*, after the final hearing and the close of the record), the proposed recommendation concerning 2009 asset additions is an inappropriate revision of the terms of the proposal pending before the Commission, and is an unfair expansion of the closed record.

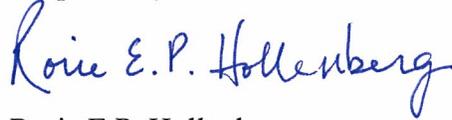
As the Commission is aware, the OCA opposed the settlement agreement on account of the way in which the settling parties calculated the proposed revenue requirement. We also oppose the recommendation that PWW recover the costs of additions completed and placed in service after the end of 2008. This position is based not only upon our understanding of the intent of the proposed step adjustment, but on the fact that the Company already contemplates filing another rate case to recover certain 2009 capital additions. *See* Prefiled testimony of Donald L. Ware, p. 8, lines 8-15 (Mr. Ware states that capital additions in 2009 will be recovered in a subsequent rate case). Lastly, we object to Staff’s recommendation to the extent that it seeks

¹ Of note is the fact that the revised Schedule 3, Attachment A, Exhibit 2 purports to be an itemized list of “Asset Acquisitions” for the “period ended December 31, 2008.” However, this document contains numerous entries of asset acquisitions in 2009.

to expand the scope of the relief requested by the proposed settlement agreement, as well as the relief requested by the Company's filings, *after* the conclusion of the final hearing.

Thank you for consideration of the OCA's position. Please do not hesitate to contact me if you have any questions or require additional information.

Respectfully,



Rorie E.P. Hollenberg
Staff Attorney

cc: Service List via electronic mail

