

THE STATE OF NEW HAMPSHIRE



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PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX (603) 271-3878

Website:
www.puc.nh.gov

December 14, 2012

Debra A. Howland
Executive Director
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, New Hampshire 03301

Re: DW 12-306, Rosebrook Water Company
Filing for Temporary and Permanent Rates

DW 12-299, Rosebrook Water Company
Petition to Transfer Stock Ownership

Dear Ms. Howland,

On October 9, 2012, Rosebrook Water Company (Rosebrook) filed a Verified Joint Petition for Authority to Transfer Stock Ownership. The current owner of Rosebrook's stock, BW Land Holdings, LLC (BW), proposes to transfer all of the outstanding stock of Rosebrook to REDUS NH Water Co, LLC (REDUS). The Commission assigned Docket No. DW 12-299 to that filing. On October 12, 2012, Rosebrook filed a Notice of Intent to file rate schedules, and the Commission assigned Docket No. DW 12-306 to that filing. On November 20, 2012, Rosebrook filed its rate schedules and testimony in support of its request for a rate increase of 33.44%. Rosebrook also seeks temporary rates at current rate levels for the pendency of the permanent rate investigation. Anticipating that the Commission will shortly be issuing an Order of Notice in DW 12-306, Staff wishes to alert the Commission to an issue which we recommend be investigated during the rate case.

In Staff's current review of the stock transfer filing, it has been revealed that Rosebrook has entered into contracts with two affiliated entities for the provision of "managerial, technical, and field services". These contracts have not been filed with the Commission pursuant to the requirements of RSA 366:3. Rosebrook, in its testimony filed in its rate case, discusses these contracts and is requesting that costs arising from these contracts be included in customer rates going forward¹.

¹ In response to inquiries regarding Rosebrook's 2010 annual report, the company provided to the Commission's Audit Staff a copy of an affiliate agreement with BW Club, dated January 1, 2011. That contract also does not appear to have been filed with the Commission and, in any event, appears to have been superseded.

The company's failure to file these affiliate contracts is not, in Staff's opinion, a minor oversight. Rosebrook has a significant history of non-compliance with respect to requirements of this Commission, under previous ownership and under current ownership². In Docket No. DW 11-117, a filing made by Rosebrook for authority to use funds from its CIAC account, Staff filed a letter noting numerous instances of the failure of the company to comply with obligations clearly delineated when BW acquired Rosebrook. That June 29, 2011 letter from Staff, as well as a March 31, 2011 letter from the company acknowledging its lack of compliance, are both attached to this letter. While the March 31, 2011 letter from the company indicates that past compliance failures would not be repeated, that does not appear to be the case.

Staff brings these issues to the Commission's attention at this time so they can be included in the issues to be investigated in Rosebrook's rate case. Further, Staff recommends the Commission take no action on Rosebrook's stock transfer request in DW 12-299 until such time as the issues related to the affiliate contracts, the costs arising therefrom, and potential sanctions on the company for repeated compliance failures are resolved.

Sincerely,



Mark A. Naylor
Director, Gas & Water Division

Attachments

Cc: Docket-related service lists in DW 12-299 and DW 12-306

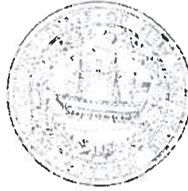
² In Docket No. DW 06-149, whereby the current ownership of Rosebrook, BW, received authority to acquire the company, BW acknowledged its obligations to comply with all requirements. The transcript of the hearing held on May 16, 2007 leaves no doubt that the company understood its regulatory obligations. The Commission took note of the long standing issue of Rosebrook's regulatory compliance when it stated in Order No. 24,773 "we note that the settlement imposes certain specific requirements on BW as a condition to the transfer. For example, the settlement establishes a timetable for Rosebrook to reconstruct its accounting, requires the utility to comply fully with the Commission's order related to the operation of the CIAC fund, sets deadlines for certain improvements, and holds the utility to a variety of reporting requirements regarding, among other things, water losses, engineering reviews and capital improvements. Therefore, we grant the petition to transfer Rosebrook to BW as conditioned by the Settlement Agreement". Order at 9.

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Debra A. Howland

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www.puc.nh.gov

June 29, 2011



Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DW 11-117 Rosebrook Water Company, Inc.
Request to Use CIAC Funds for 2011 Capital Improvement Plan

Dear Ms. Howland:

On May 26, 2011 Rosebrook Water Company, Inc. (Rosebrook) filed a request to use funds from a CIAC account for specified capital improvements to be constructed in 2011. Rosebrook provides service to some 400 customers within its franchise covering limited portions of the towns of Bethlehem and Carroll and of the unincorporated township of Crawford's Purchase. Its customers comprise the Bretton Woods resort community, including the company's largest customer, the Mount Washington Hotel (MWH).

By way of background, the CIAC fund was established in 2000 by Order 23,441 (85 NH PUC 150 (2000)) to receive monies contributed by the Town of Carroll and MWH, the latter under a 5-year special contract approved by Order No. 23,379 (85 NH PUC 1 (2000)). While contributions from both sources have since ceased, approximately \$212,350 remains in the account. The status of the account was most recently addressed in Docket No. DW 06-149, and a more complete history is given in Order 24,773 in that docket (92 NH PUC 266 (2007)). Docket No. DW 06-149 was opened to consider the sale and transfer of Rosebrook's stock from the then-owner of MWH to BW Land Holdings, LLC (BW). Order No. 24,773 addressed, among other things, a number of reporting and compliance issues regarding use of the account, as well as the need for capital improvements in the system.

On March 25, 2011, Staff met with the company at its request to review the status of various requirements contained in the settlement agreement approved in DW 06-149. The company acknowledged it had not complied with a number of those requirements, and followed up with a letter to Mark A. Naylor, Director of the Gas and Water Division, on March 31, 2011. That letter is attached.

Issues related to the proposed capital improvements, CIAC fund compliance and other matters are addressed under separate headings below.

DW 11-117 Rosebrook Water Company, Inc.
Request to Use CIAC Funds for 2011 Capital Improvement Plan
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A. Capital Improvements

One of the conditions of use of the CIAC fund is preapproval of any expenditure from it (see Order 23,441 above). As such, the company is requesting permission in the current docket to use most or all of the remaining monies in the fund on specified capital improvements to be constructed this year and estimated to cost between \$200,000 and \$220,000. A summary of the improvements is provided in the filing.

The March 31, 2011 letter to Staff noted a number of recent positive efforts by the company to address operational and improvements needs in the areas of: leak detection, backflow prevention, pump station upgrades, servicing of distribution system valves, and metering. The proposed 2011 improvements will significantly add to this list. The March 31 letter brought the company current on capital improvement reporting requirements stemming from DW 06-149, and the company committed to continue that compliance going forward. The company also provided responses, dated June 14, 2011, to data requests from Staff regarding the improvements and other matters, and those responses are attached.

Some of the proposed 2011 improvements address deficiencies identified in an October 22, 2010 NH Department of Environmental Services Sanitary Survey report (attached). Others address other longstanding system needs identified in Order 24,773 and elsewhere. Specifically, the improvements will address the deteriorating structural integrity of the water storage tank roof, provide permanent power to the tank level telemetry system to prevent recurring tank overflows, help attenuate the very high pressures in the Rosebrook system, and generally provide additional reliability of service to this resort area, including during prolonged power outages. As such Staff recommends approval of use of the CIAC funds for the projects proposed.

B. CIAC Fund Compliance

Order 23,441 established conditions for use of the CIAC fund including not only pre-authorization of expenditures from the fund, but various reporting requirements as well. The company's past failure to comply with those requirements under previous ownership was noted in Order 24,773. Regarding pre-authorization, in DW 06-149 the company "sought approval after the fact for \$89,643.26 in expenditures it made" from the fund (Order 24,773, btm of p. 3). However, on a going-forward basis the company "agreed to assume the responsibilities of managing the CIAC account in strict accordance with the 2000 order approving the fund, including: (a) seeking prior approval of the Commission regarding use of funds from the CIAC account, and (b) providing semi-annual detailed report accounting for all receipts and disbursements from the CIAC account." (Order 24,773, p. 7) However, as noted in the March 31, 2011 letter to Staff, the company failed to comply with the reporting requirements, and expended \$16,578 from the fund in October 2008 for purchase of a truck without authorization.

DW 11-117 Rosebrook Water Company, Inc.
Request to Use CIAC Funds for 2011 Capital Improvement Plan
Page 3 of 3

C. Auction

Staff notes that a foreclosure auction of some 900 acres of Bretton Woods area properties, surrounding but not including MWH and the Bretton Woods Ski Area, occurred on June 22, 2011. The properties include two golf courses and a number of planned residential development areas. Rosebrook was among the properties auctioned, purportedly conditioned on approval by this commission. The buyer is reported to be CNL Lifestyle Properties, which already owns MWH and the ski area. Rosebrook has indicated the transfer is expected to have no impact on completion of the proposed 2011 improvements (responses to Staff 1-6 and 1-7).

Staff believes the transfer of Rosebrook requires Commission approval, and we would anticipate a filing in the near future.

D. Tariff

Staff has also identified issues with the company's tariff needing clarification or resolution, and is awaiting the company's response to same. The company has indicated it would be able to formulate a response by June 30, 2011 (response to Staff 1-4).

Staff has reviewed the company's filing, data responses, and other materials as outlined above. Staff recommends approval of the use of CIAC funds for the proposed 2011 capital improvements, under the strict conditions that those funds be retained by the company and used only for the purposes intended.

Given the circumstances surrounding the CIAC fund, Staff also recommends approval *nunc pro tunc* of the 2008 withdrawal of \$16,578 for the vehicle purchase. While in no way excusing the company's compliance failures, the fact that the fund may essentially be depleted if the projects are approved and constructed as planned may make the requirements related to the fund somewhat moot unless and until the fund is replenished from some source.

If there are any questions regarding these matters, please let me know.

Sincerely,



Douglas W. Brogan
Utility Engineer

Attachments

cc: Service List

ROSEBROOK WATER COMPANY, INC.**210 Mount Washington Hotel Road, Bretton Woods, NH 03575**

March 31, 2011

Mark A. Naylor, Director
Gas and Water Division
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

Re: Rosebrook Water Company, Inc. ("Rosebrook Water") April 10, 2007 Settlement Agreement.

Dear Mr. Naylor:

Thank you for meeting with Mike Brunetti, Dana Bisbee and me last Friday. We appreciated your taking time to work through our questions and mutual issues of interest. This letter attempts to comprehensively address the terms of the April 10, 2007 Settlement Agreement among the PUC Staff, Rosebrook Water Company, Inc., MWH Preservation Limited Partnership and BW Land Holdings, LLC. We submit herewith the semi-annual report required by Par. D.5.b of the Agreement on the Contribution in Aid of Construction (CAIC) Fund and the annual reporting requirements by Par. D.8. Each of these reports is enclosed.

We have not provided you all of the documentation in the manner and frequency required; this oversight will not be repeated.

D.1. Deposit of \$105,000 into CIAC account.

On 01/08/2008 the Company received the \$105,000 payment from the MWH and deposited it into the operating account to replace the \$105,000 the Company had transferred to the CIAC fund in August 2007. The original deposit is listed on the attached CIAC report.

D.2 Revise Company tariff

From our discussion on March 25, 2011 it appeared to both the Commission and the Company that the Company tariff has not been updated beyond the version issued from Robert

Rosebrook Water Company, Inc. . 210 Mount Washington Hotel Road, Bretton Woods, NH 03575

Satter on April 30, 1996 with an additional revision issued from Wayne Presby on April 01, 2000. The usage rate of \$.404 per hundred gallons is still in effect today. Any tariff revisions will be addressed after an analysis of the 2010 financial statements and most appropriate use of existing CIAC funds.

D.3 Special Contract with CNL

The special contract with the Mount Washington Hotel was eliminated.

D.4 Reconstruct accounting

All available accounting records were researched to determine the transfer details from the three different accounting systems under owners Satter to Presby to BW Land Holdings, LLC. These were coordinated with each year's PUC report, [Section F-8 UTILITY PLANT IN SERVICE (ACCOUNTS 101 and 104)], and further coordinated with each annual depreciation expense/accumulated depreciation schedule. This spreadsheet lists assets within each asset class in as much detail as could be located; in particular it breaks out the June 2000 opening entry on QuickBooks-Rosebrook Water, LLC "PP&E - \$567,966.69" into eight distinct asset categories. This amount was reduced at year end 2000 to \$502,274 by an accumulated depreciation re-class of \$62,569 and three disposals and is still carried at that amount through 2010. The spreadsheet has complete detail from 1999 to 2010. This spreadsheet will be updated as the Company adds to plant in 2011 and future years. Depreciation is recorded monthly and adjusted at year end.

D.5. PUC approval re: use of CIAC funds / Semi-annual detailed report

The Company anticipates making a request for use of CIAC funds.

The Company has reported on CIAC as part of its PUC Annual Report. However, we have not provided the semi-annual detailed report accounting for all receipts and disbursements. Aside from the \$105,000 deposit, the CAIC account has only two types of activity from 2007 to present: monthly interest and the purchase in October, 2008 of a GMC SIERRA 1500 1/2 ton short bed 4X4. The amortization of CIAC is recorded monthly and adjusted at year end. See the enclosed Semi-annual Report Section D.5b.

D.6. Replace elbow/fitting / Potential system improvements

On May 10, 2010, work began on replacing the rusted elbow in the Rosebrook Water pump house. Initially, the plan was to replace piping from the 10" elbow under the pump house floor to and including the 6" flange tee on the pump discharge. A pipe joint restraint failed in the early morning that day causing a major flood in the pump station. Because of this, additional

pipng (approx. 40' of 10" DI), joints and gaskets had to be installed. Due to the extra work involved, the job was finally completed on May 20, 2010.

See the enclosed Rosebrook Water additional annual reporting requirements Section D.8a for significant improvements in 2010 and attachment D.8c for planned improvements in 2011.

D.7 Replace solar panel / Meter water used for snowmaking on the tubing hill

The solar panels at the water tank will be replaced with a hard-wired system by October 1, 2011. The water tank cover itself needs improvements that must be completed by this date per the NHDES. We intend to do all work within the same time frame.

In November 2007, a portable meter and separate backflow preventer were purchased to be used for metering water used to make snow for the tubing hill and other locations where meters were not installed. Two additional combined meters and backflow preventers were purchased in November 2009.

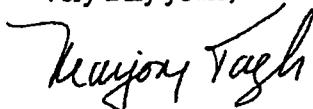
D.8. Rosebrook Water additional annual reporting requirements – See Enclosed

- a. See Section D.8a - for list of significant improvements during 2010.
- b. See Section D.8b - for list of engineering studies / report.
- c. See Section D.8c - for list of planned improvements for 2011
- d. See Section D.8d - for report detailing water produced, consumed and lost.
- e. See Section D.8e - for summary of leak detection and other measures.

With this comprehensive submittal, the Company believes that it has complied with the term of the Settlement Agreement. For those provisions (D.5b and D.8 a –e) of the Settlement Agreement that are on-going, we commit to provide such information regularly and on time.

Thank you very much, Mark, for your review and consideration of this submittal, and again for meeting with us last week.

Very truly yours,



Marjory Taylor
Controller, RBW
cc: Charles Adams