

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-071

ATKINSON AREA WASTE WATER RECYCLING, INC.

Request for Change in Rates

DW 20-091

ATKINSON AREA WASTE WATER RECYCLING, INC.

**Petition to Approve Transfer of Ownership of
Atkinson Area Waste Water Recycling, Inc.**

Order Establishing Rates and Approving Transfer of Ownership

O R D E R N O. 26,547

November 9, 2021

In this order the Commission approves rates for Atkinson Area Waster Water Recycling, Inc. (AAWW) resulting in an increase in rates for both residential and commercial customers of approximately 23.25 Percent. The Commission also approves the transfer of the ownership of AAWW from Atkinson Farms, LLC to three family trusts.

I. PROCEDURAL HISTORY

A. DW 20-071

On May 11, 2020 Atkinson Area Waste Water Recycling, Inc. (AAWW) filed a notice of intent to petition for a change in rates, and on July 13, 2020, filed a petition for adjusted permanent rates. On August 6, 2020, AAWW filed a motion for confidential treatment of information in the filing relating to payments by AAWW to related entities for contractual services. By Order No. 26,393 (August 12, 2020) the Commission suspended the AAWW tariffs and scheduled a prehearing conference on September 17, 2020. On August 31, 2020, AAWW filed a proposed Management

Service and Rental Agreement together with a motion for confidential treatment of certain terms of the agreement.

B. DW 20-091

On June 4, 2020, AAWW filed a petition for approval of a transfer of ownership of AAWW from Atkinson Farm, LLC (AF) to three separate family trusts held by each of the three owners of AF. On December 2, 2020, AAWW filed a motion for confidential treatment of information related to the ownership shares in AF, Lewis Builders Development, Inc. and Atkinson Concessions, Inc.

C. DW 20-071 and 20-091

On August 24, 2021, the parties moved to consolidate the two dockets, Docket No. DW 20-071 (Rate Case) and Docket No. DW 20-091 (proposed transfer of AAWW from AF to three revocable trusts). The Commission consolidated the two dockets on September 24, 2021. The Department of Energy Staff (Energy) filed a Settlement Agreement (Settlement) of issues in both dockets on September 23, 2021, and a final hearing was held on the Settlement on September 30, 2021.

II. BACKGROUND

AAWW is a regulated sewer utility and provides sewage services in the Town of Atkinson within its franchise area. AAWW is currently owned by AF, although the parties in a separate docket, DW 20-091, have proposed a change in ownership. AAWW's sole customer is currently Atkinson Concessions, Inc. d/b/a The Atkinson Resort & Country Club (ACI) which is also owned by AF. AF owns the real estate upon which both ACI and the AAWW treatment facility are located. ACI receives water service from Hampstead Area Water Company (HAWC) and HAWC plans to serve AAWW's future customers.

AAWW's first rate proceeding before the Commission was filed in 2007, Docket No. 07-131, in which the Commission approved annual base rates of \$108 and \$3,000 for residential and commercial customers respectively, and a consumption rate of \$11.91 per hundred cubic feet (ccf) of water consumption. *See* Order No. 24,899 (September 25, 2008). The rates were based upon an assumed build out of 128 residential units and one commercial customer. Although the commercial customer, ACI, did materialize, construction of the residential units did not begin until 2020, and construction of the first 64 residential units is currently underway.

All of AAWW's One Hundred (100) shares of outstanding stock are currently held by AF, a New Hampshire limited liability corporation. AF is currently wholly owned by Christine Lewis Morse, Jonathan T. Morse, and Elizabeth A. Morse in their respective family trusts. AF is also the parent company of ACI. The transfer of ownership is to provide for estate planning and to assure an orderly business transition. The transfer will eliminate the AF layer of ownership leaving the respective trusts for Christine Lewis Morse and her children Jonathan T. Morse and Elizabeth A. Morse as direct owners of AAWW.

Christine Lewis Morse is the sole Director and Vice President of AAWW. She is also the Vice President of HAWC a public utility regulated by the Commission. She is the President of Lewis Builders Development, Inc. (LBDI) which has provided technical and managerial expertise under the management agreement it has with AAWW. It provides similar services to HAWC under a separate management agreement. Christine Lewis Morse, assumed the position of President and Chief Operating Officer of AF's predecessor, Atkinson Farm, Inc., and now serves as President and the sole Manager of AF. She is responsible for the day to day operations of the companies.

Jonathan T. Morse is currently the Treasurer of AAWWR and the Treasurer of AF, ACI, LBDI, and HAWC. Elizabeth A. Morse is currently the Secretary of AAWWR and the Secretary of AF, ACI, LBDI, and HAWC. In addition, both Jonathan T. Morse and Elizabeth A. Morse have been employed with each company and involved in the day to day operations of each company. All of the entities named in these two dockets are closely held companies owned by related parties.

III. INITIAL POSITIONS OF THE PARTIES

A. DW 20-071 Rate Case

AAWW

AAWW proposed an increase in revenue, including a step increase, of \$56,443.00, effective December 1, 2020. The proposed rates would be a 94% increase over current approved annual revenue and would result in average annual revenue of \$53,415 per customer for commercial customers, and \$979.77 per customer for residential customers. Based on a revised initial customer base consisting of 64 residential units and one commercial facility, AAWW initially requested recovery of an annual revenue requirement from measured metered service of \$116,120. AAWW based its request on a 2019 test year, adjusted for estimated increases in certain operating expenses resulting from anticipated 2020 plant additions.

AAWW claimed that current rates do not allow it to meet its anticipated operating expenses and earn its proposed rate of return. AAWW argued that it is appropriate to increase permanent rates, and noted that this would represent the first rate increase in over twelve years. AAWW proposed the following rates:

- a. Base charge for residential customers of \$210.15 per year and a consumption charge of \$16.87 per 100 cubic feet of usage.

- b. Base charge for commercial customers of \$5,837.42 per year with a consumption charge of \$16.87 per 100 cubic feet of usage.
- c. Collection of tax from developers and customers who make Contributions In Aid of Construction (CIAC).

B. DW 20-091 Change in Ownership

AAWW

AAWW claimed that the proposed change in ownership is for estate planning purposes only, and would have no effect on the day-to-day operations of AAWW. The stock of AAWW currently held by AF would be transferred, 50 voting shares to the Christine Lewis Morse Family Revocable Trust, and 25 non-voting shares each would transfer to the named trusts for Jonathan T. Morse and Elizabeth A. Morse, Christine Lewis Morse's adult children. The same family members who are currently managing the operations of AAWW will continue to manage its affairs. According to AAWW, these individuals possess the technical, financial and managerial skills to operate a regulated sewer utility such as AAWW. If the stock transfer is approved, AAWW has agreed to change its tax filing status from an S corporation to that of a C corporation.

IV. SETTLEMENT

A. Permanent Rates

The Department of Energy (Energy) and AAWW joined in a Settlement resolving all issues in the two consolidated dockets. The Settlement proposes an overall annual revenue requirement of \$78,645, which is an increase of \$14,834 or 23.25 percent over current rates. Because the 128 residential units assumed to be in existence for purposes of establishing rates during the prior rate case did not materialize, the settling parties made some adjusting assumptions in the Settlement.

The Settlement projects a three year average customer base of 44 (43 residential and one commercial customer). As a result, the settling parties agree that the existing rate base and related expenses should be reduced by a factor of 66.15 percent. With regard to the new rate base to serve two future residential buildings, the settling parties, and based on the same three year projections, agree that rate base and related expenses for new rate base will be based on a capacity factor of 66.67 percent. Based on the same three year projections, the settling parties agree that projected residential usage should be 2,098 ccf. Finally based on the same three year projections, the settling parties agree that marginal increases in operating expenses resulting from service to two new residential condominium buildings should be based on a capacity factor of 66.67 percent.

The settling parties acknowledge that the Commission typically sets rates using an historic test year, with certain known and measurable adjustments. Nonetheless, in this case with post-test year construction in progress for these residential units, an historic test year would not be helpful in determining revenue requirements. Going forward, however, the settling parties support the use of an historic test year in AAWW's next rate case. The settling parties agree upon a base cost of equity of 9.63 percent, plus a 50 basis point adder based on avoided litigation costs, resulting in a cost of equity of 10.13 percent.

Based upon all of these adjustments the settling parties recommend the following rates for AAWW:

Annual Base Rate for commercial customers \$3,697.43 an increase of \$697.43;

Annual Base Rate for residential customers of \$133.11 an increase of \$25.11;

Volumetric Charge for both commercial and residential of \$14.68 per ccf an increase of \$2.77 per ccf.

These rates represent an approximate 23.25 percent increase over current rates. The settling parties recommend an effective date for these rates of October 1, 2021, billed retroactively.

B. Rate Case Expenses

The settling parties agree that AAWW will only request recovery of rate case expenses and not expenses related to the request for a change in ownership. The request shall be filed within 30 days of the Commission order in this docket and shall conform with Puc 1905.02. Energy commits to reviewing the filing and providing a statement to the Commission concerning the amount and method of rate recovery proposed by AAWW. The settling parties agree that the rate case expense recovery surcharge shall be shown as a separate line item on customer bills.

C. Service Agreements with Related Parties

The settling parties recommend approval of the following three service agreements between AAWW and related parties:

1. A management services agreement with LBDI, that provides, management, accounting, legal, payroll, real estate, tax, and truck repair and maintenance.
2. A services agreement with HAWC that provides customer service and equipment maintenance and repair services.
3. A services agreement with ACI for accounting, office and equipment repair, and services, including landscaping services.

The settling parties agree that these three agreements may only be amended or cancelled in writing after Commission review and approval. AAWW claims that it will be able to take advantage of economies of scale and the expertise and equipment of these related entities. The settling parties agree that protections are in place against

duplication of services, and that excessive profits or mark-ups are avoided by using the same labor burden and overhead expense calculations as those used by LBDI.

D. Billing Agreement with HAWC

AAWW has contracted with HAWC to provide billing and disconnect services and to terminate water service for non-payment of sewer bills. Given HAWC's larger customer base of 3,400 households, the contract with HAWC takes advantage of economies of scale. HAWC will include sewer service billing for AAWW customers on its water bills. The settling parties request that the Commission waive Puc 703.03(g) which requires that the sewer company provide customers notice of intent to disconnect. Otherwise the settling parties maintain that the terms of the Billing Agreement comply with the requirement of Puc 703.03.

The settling parties agree that the Billing Agreement compensates HAWC fairly for the services it offers because the services are offered at HAWC's approved tariff rates. AAWW shall charge its customers and compensate HAWC at the charges set for those services in HAWC's tariffs. In addition, the settling parties have agreed to compensate HAWC for its billing and disconnect services at the per customer rate of \$10 per year. This saves AAWW from hiring employees to perform these functions and is a reasonable cost for the services. The settling parties agree that the billing agreement can only be amended or cancelled in writing after prior review and approval by the Commission.

E. Ownership Transfer

AAWW seeks to remove its current owner AF and, instead, have the three family trusts which own AF become the direct owners of AAWW. AAWW agrees to file a change in tax status to that of a C Corporation within 30 days of a Commission order approving the ownership transfer. The settling parties agree that this change in

ownership will not change the current management of AAWW. The settling parties agree that should any of the three family trusts exercise the option to revoke, that will be considered a change in ownership of AAWW and require AAWW to file a petition to transfer ownership with the Commission. Thus, the settling parties request that the Commission approve the change in ownership of AAWW effective on the date the Commission issues an order approving the transfer.

F. Motions for Confidential Treatment

AAWW filed motions on August 6 and 31, 2020, requesting confidential treatment of financial information concerning related parties and contained in management service and service agreements with related entities. On September 23, 2021, AAWW filed a motion seeking confidential treatment of ownership information for several related entities as well as a memorandum from a private attorney provided to AAWW and related entities. The settling parties assert that all of this information should be protected from disclosure pursuant to RSA 91-A:5, IV.

V. COMMISSION ANALYSIS

Unless precluded by law, disposition 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. Admin. R., 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. *Hampstead Area Water Company, Inc.*, Order No. 26,131 at 3 (May 3, 2018). Nonetheless, the Commission

cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.*

A. Permanent Rates

The Commission is authorized to fix rates after a hearing, upon determining that rates, fares, and charges are just and reasonable. RSA 378:7. In circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. In determining whether rates are just and reasonable, the Commission must balance the customers' interest in paying no higher rates than are required against the investors' interest in obtaining a reasonable return on their investment. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In this way, the Commission serves as arbiter between the interests of customers and those of regulated utilities. *See* RSA 363:17-a; *see also EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 17 (March 10, 2011).

In this case the Settlement proposes to set rates based on an assumed customer base of 43 residential and one commercial customer on average over a three year period and then sets rates based on an allocated percentage of rate base and operating expenses. We find this approach to be reasonable given that residential units are currently under construction. We also find the proposed rates which represent a 23.25 percent increase over current rates to be just and reasonable and we approve them effective October 1, 2021.

B. Service Agreements with Related Parties

We find the terms of the proposed service and management agreements reasonable and we approve them. Our approval is conditioned on AAWW's commitment to submit any amendment or termination of these agreements to the Commission for prior review and approval.

C. Billing Agreement with HAWC

The proposed billing and disconnection agreement with HAWC appears to be a reasonable solution to AAWW's small customer base. It will allow efficiencies by using HAWC's existing customer billing and disconnection arrangements to be used for AAWW's benefit. Based upon the evidence presented, we find the \$10 per customer annual cost of billing services is reasonable and we approve it. We further find this arrangement complies with the requirements of N.H. Code of Admin. R. Puc 703.03(g) in as much as the notice of disconnection of water service is provided by HAWC on behalf of AAWW. We do not interpret the rule as prohibiting such contracts with water utilities by sewer utilities for notice of termination of water services. Therefore we do not find a waiver of the rule is needed for this billing and notice arrangement.

D. Ownership Transfer

Parties may transfer ownership in a public utility only after a determination by the Commission that the proposed transfer shall be for the public good. RSA 374:30. In this case the proposed transfer merely eliminates an intermediate entity, AF. The record established that the management of AAWW will not change as a result of this transfer. Therefore, we find the transfer to be for the public good and approve it.

E. Motions for Confidential Treatment

Pursuant to Puc 203.08, the Commission must issue a protective order upon finding that a document is entitled to confidential treatment under RSA 91-A:5, or other applicable law. In making such a finding, the Commission considers the document for which confidential treatment is requested, the statutory or common law basis for confidentiality, and the harm that would result from disclosure. Puc. 203.08(b). Finding that a document is confidential pursuant to a RSA 91-A:5 exemption requires narrowly construing the exemption, and balancing application of

the exemption against the public's interest in disclosure. *Reid v. N.H. Attorney General*, 169 N.H. 509, 520 (2016). Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

The first step of the analysis – to determine whether a record qualifies as exempt under RSA 91-A:5, IV as confidential, commercial, or financial information – requires a showing that disclosure “is likely: (1) to impair the [applicant’s] ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 554 (1997) (quotation omitted). Like other RSA 91-A:5, IV exemptions, the second step of the analysis requires a balancing test using a three-step analysis to determine whether disclosure will result in an invasion of privacy. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 354-357 (May 29, 2020) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 707 (2010)).

AAWW's two motions filed on August 6 and 31, 2020, related to the financial information supporting the labor burden and overhead rates charged to AAWW under its management and services agreements with other related entities. We find such financial information to be confidential because it is financial information, the disclosure of which may cause harm to the competitive position of the entities providing contractual services. We also find that the public has an interest in understanding how the various expenses incurred by a regulated utility such as AAWW are established. Nonetheless, when balanced against the contracting parties' interest in protecting their respective labor rates and overhead, we find the balance

favors non-disclosure of the identified labor burden and overhead rate documentation. As a result, we will grant these two motions for confidential treatment.

In its motion for confidential treatment filed on September 23, 2021, AAWW asked for non-disclosure of ownership information of private family trusts of closely held companies, as well as a legal memorandum from outside legal counsel. We find this information to be confidential because it relates directly to the structure of private trusts and legal advice relating thereto. We do not find that the public has a compelling interest in disclosure of the information, and therefore we grant the motion for confidential treatment.

These decisions are subject to our ongoing authority, on our own motion; or on the motion of any party, or member of the public, to reconsider our determination. See Puc 203.08(k)

Accordingly, we approve the Settlement and allow AAWW to implement the rate changes, ownership transfer, affiliate agreements, and all related arrangements as set forth herein above.

Based upon the foregoing, it is hereby

ORDERED, AAWW is authorized to charge the permanent rates described in the Settlement and approved in this order effective October 1, 2021; and it is

FURTHER ORDERED, that AAWW may transfer ownership as described in the Settlement and approved in this order; and it is

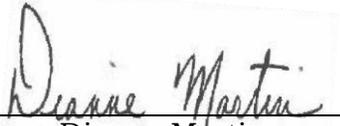
FURTHER ORDERED, that AAWW may enter into the three service and management agreements described in the Settlement and approved in this order; and it is

FURTHER ORDERED, that AAWW may enter into the billing and disconnect agreement described in the Settlement and approved in this order; and it is

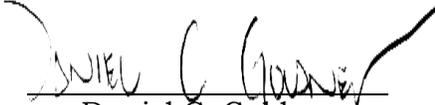
FURTHER ORDERED, that the three motions for confidential treatment are granted; and it is

FURTHER ORDERED, that AAWW shall file conforming annotated tariffs within 15 days of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 2021.



Dianne Martin
Chairwoman



Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 20-071

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