

DW 02-198

HAMPSTEAD AREA WATER COMPANY

**Petition for Authority to Acquire Assets, Incur Debt
And Obtain New Franchises**

**Order Approving Stipulation and Granting Authority to
Acquire Assets, Incur Debt and Obtain New Franchises**

O R D E R N O. 24,296

March 19, 2004

APPEARANCES: Robert H. Fryer, Esq. for Hampstead Area Water Company; Jean S. Routhier, Selectman, for the Town of Hampstead, New Hampshire; F. Anne Ross, Esq. for the Office of the Consumer Advocate, representing residential ratepayers; and Marcia A. B. Thunberg, Esq., for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND & PROCEDURAL HISTORY

Hampstead Area Water Company, Inc. (HAWC) is a regulated public water utility in accordance with RSA 362:2 and RSA 362:4. HAWC operates several water systems that serve approximately 2,500 customers in several communities throughout southeastern New Hampshire including Hampstead, Atkinson, Chester, Danville, Plaistow, Sandown and Salem. In a petition presently before the Commission in Docket No. DW 03-150, HAWC is also requesting franchise approval for an area of East Kingston, New Hampshire.

On October 25, 2002, HAWC filed a petition with the New Hampshire Public Utilities Commission (Commission) that 1) requested authority to provide service to three additional

franchise areas, 2) requested authority to purchase the assets of six water systems (including the three systems serving the proposed franchise areas) from Lewis Builders Development, Inc. (Lewis Builders), with which HAWC is affiliated, and 3) requested authority to incur debt from Lewis Builders in order to finance the proposed purchase of assets. Previously, on September 27, 2002, HAWC had filed a petition with the Commission requesting authority for a general rate increase and a consolidated rate for all of its water systems including the six systems that are the subject of the instant docket. This filing is currently before the Commission in Docket No. DW 02-128.

The three proposed additional franchise areas, which collectively are referred to as the "Satellite Systems", include 1) a 56-unit condominium development located in Kingston, New Hampshire known as Lamplighter Estates; 2) a 19-lot subdivision located in Nottingham, New Hampshire known as Camelot Court; and, 3) a 36-lot subdivision located in the Towns of Sandown and Fremont, New Hampshire known as Cornerstone Estates. HAWC's filing included franchise descriptions (Exhibit 5) as well as franchise maps for each of the proposed franchise areas (Exhibit 2). HAWC also included the proposed cost of these systems in its filing (Exhibit 1).

The three other systems that are also the subject of the instant docket are collectively referred to as the "Supplemental Systems" and exist within the currently approved franchise boundaries for HAWC. Two systems, known as Settler's Ridge and Cogswell Farms are located in Atkinson, New Hampshire. The third system, known as Bartlett Brook, is located in Kingston, New Hampshire. HAWC also included the proposed cost of these systems in its filing (Exhibit 3).

The filing submitted by HAWC also contained copies of various New Hampshire Department of Environmental Services (NHDES) permits for each of the six systems (Exhibit 4) as well as copies of the recorded easements for the six systems (Exhibit 8). The petition submitted by HAWC also included a proposed Management Agreement with Lewis Builders to manage and operate its various water systems (Exhibit 7).

On November 1, 2002, the Board of Selectmen for the Town of Nottingham advised the Commission that it had been notified of HAWC's proposed franchise petition, including the Camelot Court development. On November 18, 2002, the Town of Fremont Board of Selectmen advised the Commission that it had been notified of HAWC's proposed petition including the Cornerstone Estates development.

On November 20, 2002, a Prehearing Conference and Technical Session were held in Docket No. DW 02-128. At that

Prehearing Conference, the Office of Consumer Advocate (OCA) as well as the Commission Staff (Staff) agreed that a deliberation of the issues in Docket No. DW 02-198 should be completed prior to the rate case proceeding in Docket No. DW 02-128.

Consequently, Staff, OCA and HAWC were instructed by the Commission to formulate a procedural schedule for Docket No. DW 02-128 that incorporated the deliberation of the issues associated with Docket No. DW 02-198. On December 4, 2002, Staff submitted a letter to the Commission proposing a joint procedural schedule for Docket's DW 02-198 (Phase One) and DW 02-128 (Phase Two).

On December 13, 2002, the Commission issued Order No. 24,096 approving the proposed procedural schedule. This order also noticed the issues raised by HAWC's petition in Docket No. DW 02-198 and scheduled a Prehearing Conference and Technical Session to consider these matters on January 10, 2003.

At the January 10, 2003 Prehearing Conference, HAWC, OCA and Staff appeared. In addition, Selectman Jean S. Routhier appeared on behalf of the Town of Hampstead (Hampstead). The Commission asked Ms. Routhier to provide clarification as to whether her appearance was as an individual or as a representative of Hampstead. On January 22, 2003, the Commission received a letter from the Town of Hampstead indicating that the Board of Selectmen had designated Ms.

Routhier as its representative to intervene on behalf of the Town of Hampstead. The Commission granted the Town of Hampstead's intervention request by Secretarial Letter on January 28, 2003.

Discovery was conducted with regard to HAWC's filing which included an audit by the Commission Staff and two rounds of data requests propounded by Staff and the Intervenor. A Settlement Conference amongst the parties was held on March 7, 2003. As a result of the Settlement Conference, on March 10, 2003, Staff submitted a letter to the Commission, supported by the parties, requesting suspension of the procedural schedule and requesting that the April 1, 2003 hearing regarding DW 02-198 be postponed until May. On March 25, 2003, a Secretarial Letter was issued granting the request to suspend the procedural schedule and rescheduling a hearing in DW 02-198 for May 8, 2003.

Efforts to reach agreement on contested issues were not successful. On May 7, 2003, Staff submitted a letter to the Commission requesting the cancellation of the hearing scheduled for May 8, 2003. Realizing that this request for cancellation was in violation of N.H. Admin. Rule Puc 203.12, which requires that requests to postpone hearings be made at least 7 days prior to the hearing, Staff argued for a waiver of this rule in light of the good faith efforts to reach agreement. In response to

this request, a Secretarial Letter was issued on May 7, 2003 granting a postponement of the May 8 hearing, citing that this action was reasonable under the circumstances in order to promote the orderly and efficient conduct of the proceeding.

On September 17, 2003, HAWC filed a Motion for Confidential Treatment pursuant to Puc 204.06 with regard to certain financial information relating to the calculation of overhead for Lewis Builders. On October 3, 2003, Staff filed a letter with the Commission which contained a proposal from the parties for a revised procedural schedule in Dockets DW 02-198 (Phase One) and DW 02-128 (Phase Two). On October 30, 2003, Staff filed a letter with the Commission indicating that it did not object to HAWC's request for confidential treatment of certain financial information of Lewis Builders. In that same letter, Staff indicated that OCA had taken no position with respect to HAWC's Motion.

A final audit report regarding the investigation of the proposed systems at Bartlett Brook, Camelot Court, Cornerstone Estates and Lamplighter Estates was issued by the Commission Staff on October 15, 2003. On October 24, 2003, a final audit report regarding the investigation of the proposed systems at Settler's Ridge and Cogswell Farms was also issued by the Commission Staff.

On November 21, 2003, the Commission issued Order No. 24,241 approving the revised procedural schedule for Dockets DW 02-198 and DW 02-128. This order also granted HAWC's motion for confidential treatment of Lewis Builder's financial information.

On November 17, 2003, Staff and HAWC filed a Stipulation representing their agreement regarding the resolution of the issues raised in DW 02-198. OCA and the Town of Hampstead were not parties to the Stipulation. On December 3, 2003, the Commission held a duly noticed hearing on the merits of the Stipulation submitted by HAWC and the Commission Staff. The Commission designated a Hearing Examiner to take evidence and make recommendations regarding the Stipulation. The Hearing Examiner submitted a recommendation on February 5, 2004.

II. POSITIONS OF THE STAFF AND COMPANY

Both the Commission Staff and HAWC expressed their support for the proposed Stipulation. The details of the Stipulation are set forth below.

A. Franchises

HAWC and Staff agree it is in the public interest and for the public good for HAWC to be granted utility franchises for the service of water to: Camelot Court; Cornerstone Estates; and Lamplighter Estates. The proposed franchises for

Camelot Court, Cornerstone Estates and Lamplighter Estates are described in Stipulation Attachments A, B and C, respectively.

HAWC and Staff agree that HAWC possesses the managerial, financial and technical expertise to operate a water utility. HAWC and Staff agree to defer to Docket No. DW 02-128 (HAWC's rate case) consideration of rates to be charged in Camelot Court, Cornerstone Estates and Lamplighter Estates. In the mean time, HAWC agrees not to impose rates upon customers located in the Camelot Court, Cornerstone Estates and Lamplighter Estates franchise areas until the conclusion of HAWC's rate case in Docket No. DW 02-128.

HAWC agrees to keep the books and records for the Camelot Court, Cornerstone Estates and Lamplighter Estates franchises according to N.H. Admin. Rule Puc 607.07, Uniform System of Accounts for Water Utilities and agrees to prepare Continuing Property Records for assets HAWC seeks to purchase in this docket.

Staff and HAWC acknowledge that there are issues relative to asset valuation for the water systems in this docket as well as in DW 02-128. It is the intention of Staff and HAWC to dispose of those issues in the rate proceeding presently before the Commission in Docket No. DW 02-128.

B. Purchase of Assets

HAWC and Staff agree that HAWC may purchase the assets as set forth on Attachment D, Schedule 3 of 3 to the Stipulation [Cogswell Farms, Settler's Ridge and Bartlett Brook], but that the final purchase price for such assets shall be as determined in the rate proceeding before the Commission in Docket No. DW 02-128.

HAWC and Staff agree that HAWC may accept, as Contribution in Aid of Construction, those assets of the Lamplighter Estates, Cornerstone Estates and Camelot Court systems at those values set forth in Attachment D, Schedule 2 of 3 to the Stipulation.

C. Financing

HAWC and Staff agree to support HAWC's request for financing from Lewis Builders for an amount up to \$473,338.53 for the purchase of the assets related to the Cogswell Farm, Bartlett Brook and Settler's Ridge systems. This amount represents the audited amounts as presented by HAWC. Schedules depicting these costs attributed to each system are contained in Attachment D, Schedule 1 of 3 to the Stipulation.

HAWC and Staff recommend the Commission approve an interest rate no higher than two and one quarter percentage points over the prime interest rate published in the Wall Street Journal adjusted on December 31st of each third (3rd) year.

HAWC and Staff recommend that the initial interest rate be based on the Wall Street Journal prime interest rate as of December 31, 2003. The promissory note shall contain a maturity date of January 1, 2023.

D. Management Agreement

HAWC and Staff agree that consideration of the Management Agreement between HAWC and Lewis Builders will be deferred to Docket No. DW 02-128, HAWC's rate case.

The Office of the Consumer Advocate (OCA) did not sign the Stipulation and opposed HAWC's requests in this docket. OCA does not believe that HAWC has adequately demonstrated an ability to appropriately manage and report the finances of its utility operations. At hearing, OCA explored provisions of the audit reports completed by the Commission Staff, and cited incomplete records and the difficulties encountered by Staff in obtaining adequate documentation for some entries. OCA did not express concern with the ability of HAWC to operate water systems in a safe and reliable manner, but did express concern with HAWC's ability to maintain its accounting system in compliance with Commission requirements. Therefore, OCA argued, the petition should be denied, and Lewis Builders should continue to operate the systems in the meantime.

III. COMMISSION ANALYSIS

After review of the Hearing Examiner's report in this docket, we will grant to HAWC the approvals it seeks in this docket. HAWC has been operating water systems in New Hampshire for over 25 years. As a result of its relationship with Lewis Builders, HAWC continues to expand and add new systems to its utility holdings. This petition seeks approval for adding three new franchises (Lamplighter Estates, Camelot Court and Cornerstone Estates), as well as approval for purchasing those systems from Lewis Builders. In addition, HAWC is also requesting authority to purchase the assets of three other systems (Bartlett Brook, Settler's Ridge and Cogswell Farms) from Lewis Builders and to finance the acquisition of these assets.

To deny this petition as suggested by OCA would be to fail to recognize that, in some cases, customers are already being provided water service. While we are concerned that HAWC has not sought approval from us prior to construction of the new systems as required by RSA 374:22, such failure does not warrant denying the requested franchises, especially in light of HAWC's demonstrated ability to operate several water systems. However, it appears clear from the record in this proceeding, that our Staff has experienced considerable difficulty in auditing the books and records of HAWC. It also appears that HAWC has not

been maintaining its books and records in accordance with Commission requirements. The Hearing Examiner noted in her report that HAWC/Lewis Builders has had three different controllers in a short period of time. The record does show, however, according to our Hearing Examiner's report, that considerable progress has been made on the part of HAWC to address certain accounting and record-keeping deficiencies. Staff has identified the areas of concern and, in reviewing the audit reports entered as exhibits at hearing, HAWC has committed to bringing itself into compliance. This, coupled with our determination that continued provision of water service is critical, warrants approval of the Stipulation.

We will therefore approve HAWC's requests in this docket. We caution HAWC, however, that, as a utility which has been in business in New Hampshire for many years, allowing its accounting and record-keeping to fall out of compliance with our requirements is unacceptable. An adequate amount of resources must be devoted to the proper maintenance of financial records. We further note that Staff and HAWC indicate in the Stipulation Agreement that a number of accounting matters will be reviewed and determined in DW 02-128, HAWC's current rate case. We believe this approach to the resolution of these issues is appropriate. However, future problems with HAWC's financial records will result in appropriate penalties.

With respect to the financing authorization requested in this docket, we will approve HAWC's request. The Stipulation between Staff and HAWC provides that, since certain plant valuation issues remain to be resolved in DW 02-128, Commission approval is sought on an amount representing the upper limit on the financing of the plant to be acquired. We believe this is a reasonable approach to the issue and will approve it.

Based upon the forgoing, it is hereby

ORDERED, that the Stipulation reached between Hampstead Area Water Company, Inc. and Staff is APPROVED; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. is authorized to provide water service in the franchises known as Lamplighter Estates in Kingston, Camelot Court in Nottingham, and Cornerstone Estates in Sandown and Fremont, which are more particularly described in Attachments A, B, and C to the Stipulation Agreement; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. is authorized to incur debt up to \$473,338.53 as illustrated on Attachment D of the Stipulation, the final amount to be determined once the plant valuation issues are resolved in DW 02-128.

By order of the Public Utilities Commission of New
Hampshire this nineteenth day of March, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary