

DW 03-150

HAMPSTEAD AREA WATER COMPANY, INC.

Petition for Franchise Approval

Order Approving Stipulation and
Granting Approval of a Utility Franchise

O R D E R N O. 24,299

March 26, 2004

APPEARANCES: Robert H. Fryer, Esq. on behalf of Hampstead Area Water Company, Inc.; F. Anne Ross of the Office of the Consumer Advocate on behalf of Residential Ratepayers, and Marcia A.B. Thunberg, Esq. on behalf of 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 pursuant to RSA 362:2 and RSA 362:4. HAWC operates several water systems throughout southeastern New Hampshire which serve approximately 2,500 customers in various communities including Hampstead, Atkinson, Chester, Danville, Plaistow, Salem, and Sandown. In a petition for franchise approval filed by HAWC in Docket No. DW 02-198 and currently pending before the Commission, the Company is proposing to provide water service to additional systems in the communities of Kingston, Nottingham, and Fremont.

On August 4, 2003, HAWC filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting franchise authority to provide water service to a limited area

of the Town of East Kingston, New Hampshire, and to establish rates for such service.

The franchise area proposed by HAWC includes two condominium developments known as "Cricket Hill/Maplevale Farms and Woods" and "Residences at Maplevale" which, when completed, will contain a total of 106 units plus an additional 22 subdivision lots. The assets of the water system are owned by Lewis Builders Development, Inc. (Lewis Builders). Included with its petition, Hampstead submitted a proposed Management Agreement with Lewis Builders to manage and operate the proposed water system.

HAWC's petition sought to impose a rate of \$25.49 per customer per quarter for the customers served by this system. The determination of this rate was based on the actual operation and maintenance expenditures incurred by HAWC's Lancaster Farms division during the year 2002.

HAWC's petition included a copy of a Permit to Operate dated June 27, 2003 from the New Hampshire Department of Environmental Services (NHDES), effective July 1, 2003 through June 30, 2004. The petition also contained a letter dated July 28, 2003 from the East Kingston Board of Selectmen acknowledging that it had been notified of the proposed franchise petition.

In its petition, HAWC stated that the water system is operational and currently serving ten customers. HAWC later

indicated during discovery that it was serving 34 units in this system. HAWC also stated that the proposed system is not interconnected with any other part of the existing HAWC system and is located more than five miles from HAWC's closest system.

On August 22, 2003, the Commission issued an Order of Notice scheduling a Prehearing Conference and Technical Session for September 17, 2003. At the September 17, 2003 Prehearing Conference, appearances were entered by representatives of HAWC, the Commission Staff (Staff) and the Office of the Consumer Advocate (OCA). Thereafter, the parties met in a technical session to develop a proposed procedural schedule.

On September 23, 2003, Staff filed a letter with the Commission on behalf of the parties containing the proposed procedural schedule. On September 26, 2003, HAWC filed an amendment to its petition seeking to clarify its intent to seek an initial rate, rather than a temporary rate. On October 6, 2003, correspondence was received from OCA providing notification that it would be participating in this docket on behalf of residential ratepayers.

On October 24, 2003, the Commission issued Order No. 24,221 approving the proposed procedural schedule. HAWC was also ordered to notify all of its existing customers as well as the Town Clerk and Board of Selectmen for the Town of East Kingston of the proposed rate in this proceeding by mailing a

copy of Order No. 24,221 to these parties by October 28, 2003. In addition, the Commission expressed concern that HAWC was in violation of RSA 374:22, which prohibits a utility from providing service or even constructing utility plant without first obtaining the permission and approval of the Commission. As a result, the Commission also HAWC ordered to file testimony by November 20, 2003, regarding its failure to comply with RSA 374:22 and the imposition of fines pursuant to RSA 365:41.

After discovery the parties and Staff participated in settlement discussions on November 4, 2003. On November 13, 2003, Staff submitted a letter to the Commission requesting an extension of time until November 17, 2003, to file a Stipulation, which request the Commission granted.

On November 14, 2003, HAWC submitted the pre-filed testimony of Peter A. Lewis, its president, with regard to why fines should not be levied for its construction of new systems prior to obtaining Commission approval. In his testimony, Mr. Lewis stated that under HAWC's previous interpretation of the statutes in conjunction with NHDES rules and regulation, it was understood that a water utility first had to satisfy all NHDES requirements in order to satisfy the suitability and availability requirements of RSA 374:22(III) before it could even apply for Commission approval for franchise authority under RSA 374:22(I). Mr. Lewis stated that HAWC had previously

notified the Commission in writing concerning this interpretation of the statutes in a "Statement of Position" dated December 20, 2001, in Docket No. DW 00-214, but had received no response from the Commission Staff. HAWC perceived that this lack of response constituted an agreement by Staff with HAWC's interpretation of the statutes. Mr. Lewis also stated that based on recent discussions with Staff, in the future, HAWC will apply for franchise approval from the Commission after it has constructed a well and has received final water system design approval from NHDES. Mr. Lewis indicated that it was his understanding that this procedure will satisfy all requirements of both RSA 374:22 as well as NHDES requirements.

On November 17, 2003, Staff and HAWC filed a Stipulation representing their agreement regarding the resolution of the issues raised in DW 03-150. OCA was not a party to the Stipulation. On December 3, 2003, the Commission held a duly noticed hearing on the merits of the Stipulation. 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. SUMMARY OF SETTLEMENT AGREEMENT

A. HAWC and Staff agreed that it was in the public interest and for the public good for HAWC to be granted a utility franchise for service of water to the Cricket Hill/Maplevale Farms and Woods and Residences at Maplevale developments in East Kingston, New Hampshire.

B. The requested franchise area is bound and described as follows:

Bounded on the South by Route 107 Depot Road;

Bounded on the West by;

- a. Tax Map 9, Block 6, Lots 2 and 6;
- b. Tax Map 8, Block 2, Lots 13, 15, 14, 6, 10, and 5;
- c. Willow Road; and
- d. Tax Map 8, Block 2, Lots 18, 4, and 2;

Bounded on the North by Tax Map 7, Block 2, Lot 1;

Bounded on the East by;

- a. Tax Map 7, Block 2, Lot 1;
- b. Tax Map 8 Block 2, Lot 8; and
- c. The Boston and Maine Right of Way, [Tax Map 9 Block 3, Lot 11].

(The original petition also stated the proposed franchise was bounded by Tax Map 9, Block 6, Lot 5, however, in response to Staff Data Request 1-1, the Company now includes Lot 5 in their franchise area.)

C. HAWC and Staff agreed that HAWC possesses the managerial, financial and technical expertise to operate a water system.

D. HAWC agreed to charge customers in the Cricket Hill/Maplevale Farms and Woods and Residences at Maplevale franchise area a flat rate of \$25.49 per quarter on a bills-

rendered basis until HAWC files for a new rate. HAWC agreed to implement this rate as of the date of Commission approval.

E. HAWC agreed to submit to the Commission compliance tariffs for the new franchises within 15 days from the date of the order approving the Stipulation.

F. HAWC agreed to keep their books and records in accordance with N.H. Admin. Rule Puc 607.07, Uniform System of Accounts for Water Utilities and agreed to prepare Continuing Property Records for assets HAWC seeks to purchase in the future.

G. (there was no "G" in the Stipulation)

H. HAWC agreed to file with the Commission a petition to purchase assets of the Cricket Hill/Maplevale Farms and Woods and Residences at Maplevale franchise as well as a petition for financing approval, no later than July 1, 2004.

I. Staff and HAWC acknowledged 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.

J. HAWC acknowledged that RSA 374:22, I requires Commission approval of a franchise prior to a person or business entity commencing business as a public utility within this state. HAWC also acknowledged that RSA 374:22, III requires a

water company to satisfy "any requirements of the department of environmental services concerning the suitability and availability of water for the. . .proposed water utility" prior to obtaining approval of the Commission to operate as a public utility. To facilitate compliance with these statutory provisions, the Parties and Staff recommend HAWC file for Commission approval of future franchises at the time HAWC has constructed a well and has received final water system design approval (approval to build, see Env-Ws 371.04 (g)) from the Department of Environmental Services. Staff and the Parties believe filing for franchise approval at this juncture of water system development will aid HAWC's compliance with RSA 374:22 and avoid instances where a water system is constructed and in operation prior to franchise approval.

K. HAWC and Staff agreed that the Management Agreement proposed by Lewis Builders is acceptable so long as the initial water rate tariff is in effect, but may be re-visited as part of HAWC's filing for acquisition of these assets and the establishment of permanent rates, which it has agreed to do by July 1, 2004.

III. POSITION OF THE OFFICE OF THE CONSUMER ADVOCATE

The 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 in Docket No. DW 02-198, 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, only with its 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 water system in the meantime. OCA also recommended that no civil penalty be imposed, pursuant to RSA 365:41, for providing water service prior to obtaining Commission approval. Instead, OCA urged that the franchise request be denied.

IV. COMMISSION ANALYSIS

After review of the Hearing Examiner's report in this docket, we will approve the Stipulation presented by HAWC and the Commission Staff and thereby grant the franchise authority sought by HAWC in this docket. HAWC has been operating water systems in New Hampshire for over 25 years and has previously demonstrated the requisite managerial and technical expertise to operate similar water systems to that which is proposed in this proceeding. We note from the record, however, HAWC's deficiencies in maintaining its books and records in accordance

with NHPUC requirements. It appears that progress has been made on the part of HAWC to address these issues and that a number of provisions contained within the Stipulation under consideration are designed towards assuring compliance with NHPUC rules and regulations relative to record-keeping and reporting. We will direct staff to closely monitor HAWC's compliance and require HAWC to file, by October 1, 2004, a status report on its actions to bring its accounting practices fully into compliance.

With regard to the issue of the assessment of penalties against HAWC, pursuant to RSA 365:41, for operating without franchise authority, HAWC's arguments against the imposition of such penalties have some merit. HAWC acknowledges that RSA 374:22(I) requires obtaining Commission approval before commencing business as a public utility. In this case it was already serving customers and was cognizant of its need to obtain franchise approval but believed that in order to do so it first had to obtain NHDES approval, pursuant to RSA 374:22(III). HAWC stated that it had shared this interpretation of the statutes with Staff some time ago and had not received a response to the contrary. HAWC, therefore, did not pursue a franchise petition until NHDES approval was obtained. Prospectively, however, HAWC acknowledges its obligation to file for franchise approval once it has constructed a well and received final approval from NHDES for a water system design.

We concur with the opinion of both HAWC and Staff that this procedure satisfies the requirements of both RSA 374:22(I) and RSA 374:22(III) as well as current NHDES rules and regulations. Under the circumstances, we will not impose a penalty on HAWC at this time, pursuant to RSA 365:41. However we note that HAWC now has actual notice as to the requisite procedures and obligations pertinent to service to the public and application for franchise authorization.

We find that the initial rate proposed by HAWC of \$25.49 per quarter per customer on a bills-rendered basis to be just and reasonable. This rate allows HAWC to recover the operation and maintenance expenses associated with maintaining this water system until such time as it files for a new rate. We will also grant a waiver of PUC 1203.05, which requires that rates be imposed on a service-rendered basis. Until the effective date of this order, the customers of this system will have received water service at no charge. Quarterly billing, initially imposed on a bills-rendered basis, is reasonable in this instance.

Based upon the forgoing, it is hereby

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

FURTHER ORDERED, that Hampstead Area Water Company, Inc. is authorized to provide water service in the franchise known as "Cricket Hill/Maplevale Farms and Woods" and "Residences at Maplevale" in East Kingston, New Hampshire, which is more particularly described in Section III.B of the Stipulation; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. is authorized to charge an initial rate of \$25.49 per quarter per customer on a bills-rendered basis to the customers served within this franchise; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. shall submit a compliance tariff within 15 days of the date of this order that is in conformance with the requirements of this order; and it is

FURTHER ORDERED, that HAWC file by October 1, 2004, a status report detailing the actions it has taken to bring its accounting practices into compliance with Commission rules.

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

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary