

DW 04-001

ATKINSON WOODS WATER, LLC

Petition for Financing Approval and Permanent Rates

Order Approving Financing and Permanent Rates

ORDER NO. 24,404

November 19, 2004

APPEARANCES: Stephen P. St. Cyr & Assoc. by Stephen P. St. Cyr for Atkinson Woods Water, LLC; Boynton, Waldron, Doleac, Woodman & Scott, P.A. by Philip L. Pettis, Esq. for Atkinson Woods Owners Association; and Amy L. Ignatius, Esq. for Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On January 5, 2004, Atkinson Woods Water, LLC (Atkinson) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting financing approval and establishment of permanent rates. Atkinson requested authority to collect annual revenues of \$38,809 from its 56 customers, through a fixed quarterly charge of \$173.26 per customer.

Atkinson also requested approval to borrow \$248,800 over 20 years at 7 percent interest from Hall Farm Realty Trust (Hall Farm), a related party and the former owner of the water system. For a fuller recitation of the procedural developments in this docket, *see* Order No. 24,272 (January 30, 2004) and Order No. 24,298 (March 19, 2004).

Also, on March 15, 2004, Atkinson filed with the Commission a petition for approval of temporary rates, seeking authority to collect annual revenues of \$13,420 through a fixed quarterly charge of \$59.91 per customer, for a total annual charge of \$239.64 per customer. Order No. 24,298 approved the proposed procedural schedule for the duration of the case and set a hearing on the temporary rate request for May 27, 2004.

On May 25, 2004, on behalf of itself and the Parties, Staff filed a Settlement Agreement on temporary rates with the Commission. Staff also requested the Commission waive N.H. Admin. Rules, Puc 203.09, which requires all settlements be filed with the Commission no later than 5 days prior to the hearing. The Commission held a hearing on the temporary rate Settlement Agreement on May 27, 2004. On June 11, 2004, the Commission issued Order No. 24,335 approving the temporary rate Settlement Agreement and authorizing Atkinson to charge a temporary rate of \$59.91 per customer per quarter, beginning on a bills-rendered basis effective July 1, 2004.

On July 12, 2004, Atkinson filed with the Commission a request for confidential treatment for tax returns for Hall Farm, submitted in response to data requests propounded by Staff. On August 26, 2004, the Commission issued Order No. 24,364 granting confidential treatment for the tax information requested by Staff.

On July 27, 2004, Staff filed the direct testimony of Jayson P. Laflamme, Utility Analyst. On August 2, 2004, the Atkinson Woods Owners Association (Association) filed written testimony of several unit owners at Atkinson Woods.

On September 21, 2004, Staff filed on behalf of itself and Atkinson a Stipulation Agreement (Agreement) addressing, among other things, permanent rates and system improvements. Staff indicated that Staff and Atkinson intended to present the Agreement at the hearing on the merits scheduled for September 28, 2004.

On September 27, 2004, the Association filed a motion to postpone the hearing on the merits, due to a schedule conflict. In response, the Commission rescheduled the hearing to October 20, 2004.

During February through November, the Commission received numerous communications from Atkinson's customers, objecting to the proposed rate increase, requesting the Commission review and verify the maintenance expenses included in the proposed rate increase, noting continued water quality issues, and expressing their belief that water system costs had already been recouped through the sale of the condos.

II. STIPULATION AGREEMENT

At hearing, Staff and Atkinson presented the Stipulation Agreement. The Agreement calls for a revenue requirement of \$19,493 for Atkinson. This revenue requirement is based on a rate of return of 8.52%, a rate base of \$12,903, and an operating income requirement of \$1,099. Atkinson and Staff agree that the original cost of the water system was not appropriate to be recovered through rate base, and should be classified as Contribution in Aid of Construction. Thus, the rate base of Atkinson for the purpose of establishing rates in this proceeding is limited to expenditures to establish its franchise, an amount of \$9,722, plus an allowance for cash working capital.

The Agreement also proposes that the Commission approve a financing amount of \$9,722 at an interest rate of 7%. This amount represents the franchise costs expended by Hall Farm.

In providing for a revenue requirement of \$19,493, the Agreement provides for a fixed quarterly rate of \$87.02 for Atkinson's 56 customers. In recognition of administrative rule Puc 603.03(a), which requires water service to be provided on a metered basis, the Agreement calls on Atkinson to conduct a feasibility study as to the cost of providing metered service. This study is to be submitted to the Commission no later than one year from the date the Commission issues its final order in this proceeding. Along with the cost study, Atkinson is to provide a

meter installation plan that will result in all customers receiving metered service no later than two years from the date the Commission issues its final order in this proceeding.

The Agreement provides an opportunity for a step adjustment to Atkinson's rates for certain Operation and Maintenance expenses which are uncertain at this time, but which may occur in the near future. This step adjustment may be requested no later than December 31, 2005. The expenses that may be included in this step adjustment are property taxes from the Town of Atkinson; additional costs related to more frequent flushing of water mains; and State Utility Property Tax. The revenue requirement provided in the Agreement includes \$1,248 for State Utility Property Tax. Atkinson and Staff agree that, while Atkinson has not yet been subject to assessment for this tax, there are indications from the New Hampshire Department of Revenue Administration (NHDRRA) that Atkinson will incur this expense beginning in 2005. If for any reason Atkinson should not ultimately be made subject to this tax, Atkinson and Staff agree that Atkinson shall notify the Commission and refund the amount collected in rates in a manner to be worked out between Atkinson and Staff and approved by the Commission. If Atkinson should subsequently become subject to this tax in 2006, the Agreement provides that Atkinson may request recovery of the cost in the step adjustment.

The provision in the Agreement relating to property tax from the Town of Atkinson is based on the possibility that Atkinson may be subject to local property tax. The stipulated revenue requirement does not contain any recovery of local property tax, but if Atkinson is billed for this tax, it may include recovery for it in the step adjustment. In a similar manner, should Atkinson's current flushing program prove to be inadequate to resolve quality complaints, Atkinson may, in consultation with Staff, increase flushing frequency, the costs of which can be recovered through the step adjustment. Further, should increased flushing not be

adequate, Atkinson agrees to explore water treatment options, the capital costs of which are eligible for recovery through a separate step adjustment established in the Agreement specifically for water treatment purposes. Such step adjustment would consider a return on the capital costs, depreciation expense, and incremental operating costs of the system installed. This step adjustment related to a water treatment system must be requested by Atkinson no later than June 30, 2006.

The Agreement acknowledges Atkinson's right to reconcile the permanent rates provided for in the Agreement with the temporary rates approved by the Commission earlier in this proceeding. Atkinson and Staff agree that this recoupment shall be recovered through a surcharge of an equal amount to customers over a period of time to be determined by the Commission. However, the Agreement does not allow Atkinson's recoupment to include recovery of the State Utility Property Tax or the amount provided in the permanent revenue requirement for insurance expense, since those costs were not incurred by Atkinson during the period that temporary rates were in effect.

Finally, the Agreement provides for Atkinson to recover its prudent and necessary rate case expenses incurred in this proceeding. Atkinson is to provide documentation of its expenses to Staff for review, and Staff is to make a recommendation to the Commission. Atkinson will then combine recovery of its approved rate case expenses with the recoupment of temporary rates as detailed previously.

III. ATKINSON WOODS OWNERS ASSOCIATION

The Atkinson Woods Owners Association (Association) did not present witnesses at hearing, instead choosing to cross examine the witnesses provided by Atkinson and Staff, as well as making a closing statement at hearing. The Association indicated that it opposed the

Agreement. According to the statements filed August 2, 2004, the Association members were under the impression that they would be charged a monthly maintenance fee of \$110 that would include water service. In addition, the Association expressed concern about certain costs such as the State Utility Property Tax, the local property tax, and Atkinson's operation and maintenance costs. The Association also expressed concern about Atkinson's contract for services with Epping Well & Pump and the costs that can be expected to be incurred in the future under that contract. And, finally, the Association argued that recoupment of the difference between permanent rates and temporary rates only include costs that have been realized or incurred. The Association would also like to have some input into the step adjustments at the time they may be considered by the Commission.

IV. COMMISSION ANALYSIS

RSA 378:7 authorizes the Commission to fix rates pursuant to an order after a hearing. The Commission is obligated to investigate whether a proposed rate is just and reasonable. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994).

We have reviewed the record in this proceeding and we find that the Agreement is a reasonable means of concluding this docket. We will therefore approve the Agreement as presented by Staff and Atkinson. We will authorize Atkinson to charge the rates proposed in the Agreement of \$87.02 per customer per quarter. Accordingly, we find no legal or factual basis that would preclude us from setting rates for the water utility.

Since this is the first rate proceeding for this utility, we understand the difficulties in establishing rates when there is a lack of historical information on which to draw. However, it appears Staff and Atkinson have reached a reasonable basis for a revenue requirement, as well as a process for step adjustments for specific changes in circumstances. The rates called for in the

Agreement appear to be adequate to allow Atkinson to maintain its system and satisfactorily resolve issues concerning tax expenses and operation and maintenance costs. In addition, the step adjustments provided for will allow this small utility to make an adjustment to its rates if certain expenses materialize. This flexibility is appropriate in order to avoid the necessity of a full rate proceeding for expenses which are uncertain at this time.

The step adjustment for operation and maintenance expenses as contained in the Agreement as paragraph III. H. is particularly appropriate for a new utility. This mechanism protects the utility in the event certain expenses occur, including the cost of more frequent flushing of mains to alleviate quality problems. We note that the Commission has heard from a number of Atkinson's customers regarding the quality of the water they receive. These complaints relate particularly to the aesthetic quality of the water, but nonetheless are of concern.

According to the Agreement, quarterly flushing of the mains is to be implemented as a first step. If quarterly flushing is not effective, Atkinson and Staff may consider more frequent flushing, the costs of which may be recovered in the step adjustment. If this proves to be inadequate in resolving the problem, Atkinson is to consult with Staff and seek to implement a water treatment system as an option. We find that these steps adequately address customers' concerns regarding water quality.

The capital costs of this system as well as any incremental operating costs related thereto may also be considered for recovery in a separate step adjustment to rates. Structuring a potential solution to these problems through a process of consultation with Staff and step adjustments in rates is a prudent and sensible way to avoid unnecessary delays, as well as the costs of requesting recovery through a full rate case. However, in response to the Association's concerns expressed at hearing regarding future costs and having input into the process, we will

also direct Atkinson to provide copies to the Association of all communications with Staff on its measures to improve water quality, as well as communications relating to the other items of expense unknown at this time but anticipated in the future. These would include property taxes from the Town of Atkinson should the Town assess the utility for real estate tax, as well as a potential for refunds of the State Utility Property Tax should NHDRA ultimately not assess Atkinson. This is not to give the Association a veto over actions taken or expenses incurred by Atkinson in the areas defined in the Agreement. The Association should be kept informed by receiving copies of all correspondence between Atkinson and Staff, and Atkinson should be receptive to comments or concerns expressed by the Association. Ultimately, Atkinson must make its business decisions itself, and those decisions will in the end be reviewed by the Commission when the utility seeks recovery in rates. If any such decisions are viewed as imprudent or not representing sound utility management, Atkinson risks denial of recovery.

As a part of its filing, Atkinson requested that the Commission approve, pursuant to RSA 369, a level of financing of \$248,800 from Hall Farm, the previous owner of the water system. This amount represented the original cost of the system when constructed, and Atkinson requested inclusion of that amount in its rate base. The Agreement, however, indicates that Atkinson and Staff agree that recovery of the cost of the original system is inappropriate based on the fact that the cost of the original system was written off against sales of the units in the condominium. Thus, the only amount remaining to finance is the franchise costs incurred by Hall Farm in its docket before the Commission in DW 03-103. The Agreement thus requests Commission approval of \$9,722 as a loan from Hall Farm to Atkinson. The interest rate of the loan is 7% with a term of 20 years. The financing appears to be reasonable and we will approve it as a part of our approval of the Stipulation Agreement.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation Agreement entered into by Atkinson Woods and Staff as presented at hearing is hereby APPROVED; and it is

FURTHER ORDERED, that the request of Atkinson Woods, pursuant to RSA 369, to borrow \$9,722 from Hall Farm Realty Trust, on the terms as described in the Stipulation Agreement, is hereby APPROVED; and it is

FURTHER ORDERED, that Atkinson Woods is hereby authorized to charge a permanent rate of \$87.02 per customer per quarter; and it is

FURTHER ORDERED, that Atkinson Woods shall comply with the various reporting requirements in the stipulation relating to metering, the State Utility Property Tax, system flushing and other matters; and it is

FURTHER ORDERED, that Atkinson Woods shall submit a compliance tariff no later than December 15, 2004; and it is

FURTHER ORDERED, that Atkinson Woods and Staff shall provide copies of all correspondence to the Atkinson Woods Owners Association with respect to any of the issues related to either of the possible step adjustments contemplated in the Stipulation Agreement.

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

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary