

**DW 04-001**

**ATKINSON WOODS WATER, LLC**

**Petition for Financing and Permanent Rates**

**Order Approving Recovery of Rate Case and Temporary Rate Surcharges**

**ORDER NO. 24,418**

**December 30, 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. On March 15, 2004, Atkinson filed with the Commission a petition for approval of temporary rates. A full recitation of the procedural history of this docket is contained in Commission Order No. 24,404 (November 19, 2004) which approved the imposition of permanent rates.

On November 19, 2004, Atkinson filed with the Commission its request for recovery of rate case expenses as well as recovery of the temporary rate recoupment. Atkinson provided documentation supporting the proposed surcharges for rate case expenses totaling \$12,900.89, and the temporary rate recoupment amount of \$1,447.58. On November 29, 2004, Staff filed with the Commission its recommendation regarding the recoupment of temporary rates and reimbursement of rate case expenses.

On December 6, 2004, the Commission received an objection to the request for reimbursement for rate case expenses from the Atkinson Woods Unit Owners Association

(Association). The Commission also received objections from customers Pete McVay, Sue Martin, Raymond P. Zegarski, Dorothy Riccio, and Scott S. Gleason.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Atkinson Woods Water, LLC**

Atkinson initially proposes to recover the temporary rate recoupment of \$12.92 per customer per quarter for two quarters and proposes to recover rate case expenses of \$28.80 per customer per quarter for eight quarters. After consulting with Staff, Atkinson proposed to combine the temporary rate recoupment and rate case expenses and recover the surcharge over an eight quarter recover period. Atkinson disputed the need to extend the recovery period to 16 quarters. Atkinson stated it has been providing water without receiving revenue for a long period of time, and it provided water for two quarters during the temporary rate period at less than what has been determined to be the appropriate level. Lastly, Atkinson believes if it incurs anticipated expenses or capital expenditures for which there are related step increases in rates, it would be better to recover some of these costs sooner rather than later.

### **B. Atkinson Woods Unit Owners Association**

The Association believes that many if not all of the rate case expenses relate to Atkinson's efforts to include an undocumented loan in the amount of \$248,000 in the permanent rate. Time spent in this docket on the undocumented loan was unreasonable and without basis and, the Association submits, without the loan many of the rate case expenses could have been avoided. Also, as a result of Atkinson pursuing the \$248,000 loan in the rate case, the Association argues it was forced to retain legal counsel to oppose the expenses and incur its own expenses. Thus, the Association, as Atkinson's sole customer, contents it is being asked to pay rate case expenses twice.

### **C. Customers McVay, Martin, Riccio, Gleason and Zegarski**

The customers who opposed the inclusion of rate case expenses argued, among other things, that: bills were higher than they would have been due to the utility's attempts to include the \$248,000 loan, customers should not have to pay for their own counsel as well as the utility's counsel, and that the proposed surcharge was higher than any approved in recent years. Some customers objected to the recovery of expenses by Atkinson, but agreed with Staff's recommendation that the recovery period should be extended to 16 quarters.

### **D. Staff**

Staff recommended the Commission approve Atkinson's request to recover \$12,900.89 in rate case expense and \$1,447.58 in temporary rate recoupment. Staff stated it had reviewed the requested amount and agreed with it but that it disagreed with Atkinson's proposed recovery period. Staff stated that for the first two quarters of 2005, customers would be asked to pay \$41.72 in addition to the approved quarterly water bill of \$87.02. Then, for 6 additional quarters, customers would be asked to pay an additional \$28.80. Staff believed this was too burdensome and recommended the two surcharges be combined and recovered over 16 quarters so that customers are not unduly burdened. The combined amount of \$14,348.47, recovered over 16 quarters, would result in a per customer quarterly surcharge of \$16.01. Staff believed this was more reasonable, even when considering that this surcharge amount is still higher than any surcharge approved by the Commission in recent years for a water utility. In docket DW 01-193, White Rock Water Company, the Commission approved a surcharge of \$11.72 for eight quarters. In DW 02-094, Tioga River Water Company, the Commission approved a surcharge of \$13.51 for eight quarters. In DW 02-156, Lakes Region Water Company, the Commission approved quarterly surcharges of between \$7.22 and \$10.70. Staff stated that the instant proceeding is

Atkinson's first rate case, and thus it is not unusual that rate case expenses are somewhat high. Staff believed that the burden on customers is lessened considerably by Staff's proposal, when compared to what Atkinson has requested. Staff reminded the Commission that under the terms of the Stipulation Agreement, Atkinson's customers could see step adjustment increases to water rates within the next 12 to 18 months pursuant to the terms of the approved Stipulation Agreement concerning certain operation and maintenance expenses and water treatment costs.

### **III. COMMISSION ANALYSIS**

We have reviewed Atkinson's request, the Association's Objection, customers' comments in opposition and Staff's recommendation regarding recoupment of the \$1,447.58 difference between temporary rates and permanent rates and recovery of the \$12,900.89 in rate case expenses. Staff recommends approval of both, though over a different recovery period; the Association and customers oppose the rate case request.

The focus of the customers, as it relates to rate case expenses, is that the utility, the principal of which is also the developer of the residences, had initially sought inclusion in rate base of \$248,000, which is the original cost of the system. The view of the Association and customers is that the rate case expenses should be disallowed because 1) they are attributable in great part to the efforts of the utility to include in rates an undocumented loan in the amount of \$248,000 and 2) they should not have to pay for Atkinson's representation at the Commission.

We do not agree. First, the initial request to set rates based on the original cost of the system was not unreasonable under the circumstances. The situation presented in this case is not a common one, and there are few Commission orders that have considered the ratemaking treatment of utility property in these circumstances. We approved the Stipulation that committed

not to include the original cost in rate base, and believe that is the appropriate result, but we do not find the initial utility request to include that amount to have been improper.

Even if this issue had not been raised, however, it does not appear that the rate case expenses would have been appreciably different. After review of the detailed monthly bills of Mr. St. Cyr to Mr. Cherry, it is clear that the work performed went well beyond the question of the original cost of the system. This was the utility's first rate case and, thus, it required documentation of income and expenses in the past, liabilities on a going forward basis, preparation of the testimony and schedules, development of tariffs, identification of a cost of debt, establishment of a cost of equity, and calculation of the overall rate of return. In addition to these standard rate case tasks, all of which are time consuming, there were a handful of unusual accounting issues concerning, for example, state and local tax liabilities. Staff pressed Atkinson to develop a plan for flushing of mains to address the water sediment issues, and a plan for metering the system in the future. And, as in any docket before the Commission, there was time spent in review and response to discovery requests by the Staff, review of Staff testimony, and participation in the technical session, prehearing conference, temporary rate hearing and permanent rate hearing before the Commission.

Some customers expressed frustration that they should not have to pay for the rate case expenses of the utility, as they were also paying for their own representation in these proceedings. While the customers may not welcome those expenses, prudently incurred rate case expenses and other legal and regulatory expenses are considered a legitimate cost of service of a utility that should be included in rates. If the Association chooses to hire counsel or other advisors on its own, it is free to do so, but those costs cannot be used as an offset to expenses that have legitimately been incurred by the utility.

After review of the record, including the detailed invoices of Mr. St. Cyr, we find it reasonable for Atkinson to recover \$1,447.58 in temporary rate recoupment and \$12,900.89 in rate case expenses. As to the recovery period, we find Staff's recommendation to extend the recovery period to 16 quarters to be reasonable. The quarterly amounts Staff recommends are more in line with recovery amounts we have approved for small water utilities in the past. We will, therefore, permit Atkinson to recover \$12,900.89 in rate case expenses and \$1,447.58 in temporary rate recoupment through a surcharge to customer bills over 16 quarters in an amount of \$16.01 per customer per quarter.

**Based upon the foregoing, it is hereby**

**ORDERED**, Atkinson is hereby authorized to recover \$12,900.89 in rate case expenses and \$1,447.58 in temporary rate recoupment by way of a quarterly surcharge of \$16.01 per customer for 16 quarters, commencing with bills issued on or after January 1, 2005; and it is

**FURTHER ORDERED**, that Atkinson shall submit a compliance tariff within five business days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 2004.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Kimberly Nolin Smith  
Assistant Secretary