

**DW 05-070**

**HAMPSTEAD AREA WATER COMPANY, INC.**

**Petition for Order to Expand Franchise, Acquire Assets, Incur Debt and Charge Rates**

**Order Approving Stipulation Agreement**

**ORDER NO. 24,545**

**November 18, 2005**

**APPEARANCES:** Robert C. Levine, Esquire for Hampstead Area Water Company, and Marcia A.B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On April 8, 2005, Hampstead Area Water Company (HAWC) filed with the New Hampshire Public Utilities Commission (Commission) a petition with supporting testimony and attachments requesting approval to: 1) expand its franchise area within the Town of Sandown; 2) construct and operate a well inside that area; 3) issue long-term debt; 4) purchase water system assets from the developer, Ten Powder Realty, LLC; and 5) charge permanent rates to customers of a water system serving a forty (40) lot residential subdivision in the Town of Sandown known as Waterford Village Estates (Waterford Village).

On May, 17, 2005, the Commission issued an Order of Notice scheduling a Pre-Hearing Conference and Technical Session for this docket for June 16, 2005. On June 21, 2005, Staff, on behalf of the Parties, submitted to the Commission a proposed procedural schedule for Commission approval. The Commission approved the procedural schedule by Secretarial Letter dated June 24, 2005.

On September 23, 2005, Staff filed a Stipulation Agreement for consideration at the September 29, 2005 hearing, which was held as scheduled. No motions to intervene were received by the Commission in this docket.

## **II. TERMS OF STIPULATION**

The Stipulation is entered into between HAWC and the Staff of the Commission with the intent of resolving all of the issues in this proceeding.

### **A. FRANCHISE AND PURCHASE OF ASSETS**

1. Franchise and Assets - HAWC and Staff agreed that it is in the public interest for HAWC to expand its franchise, as described in Exhibit 3 of the Petition<sup>1</sup>, and to purchase the assets of Waterford Village, as set forth on Exhibit 7 of the Petition, with the adjustments recommended by Staff. Those adjusted schedules are reproduced as Exhibit A to the Stipulation. HAWC and Staff agreed that based on a conditional well approval issued by the Department of Environmental Services (DES) on May 25, 2005, that HAWC satisfies the requirements of suitability and availability pursuant to RSA 374:22. Staff explained at hearing that a DES approval letter contained in HAWC's filing, as Exhibit B to the Stipulation, refers HAWC to the DES Chemical Monitoring Program which will provide ongoing water quality oversight of HAWC's system.

2. Contribution in Aid of Construction - HAWC and Staff agreed that HAWC may accept, as a Contribution in Aid of Construction (CIAC), those assets of the Waterford Village system, with the adjustments made by Staff as contained in Exhibit A of the Stipulation. At hearing, Staff testified that it determined CIAC according to a methodology approved by the Commission in Docket No. DW 02-128, Order No. 24,362, (August 19, 2004). Staff explained

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<sup>1</sup> Three tracts of land situated in Sandown as shown on plan of land entitled "Map 19 Lots 24, 24-2, and 40, Subdivision Plan Waterford Village Estates, North Road, Sandown, New Hampshire" dated October 23, 2003, revised April 1, 2004 and recorded with the Rockingham County Registry of Deeds.

that in systems acquired by HAWC, where the purchase price is determined by the number of units served times a fixed per unit charge, the difference between that purchase price and the actual cost of construction would be classified as CIAC. CIAC would not be in rate base and thus would not be factored into rates paid by customers. Hearing Transcript of September 29, 2005 (9/29/05 Tr.) at 42 lines 8-24 and at 43 line 1. HAWC explained at hearing that many of the construction numbers were estimates, as the development is not yet completed. HAWC testified that the purchase price was a fixed amount but that CIAC could change once the actual cost of the system is known. 9/29/05 Tr. at 44 lines 1-10. Because rates are based on the purchase price and not on CIAC, the proposed customer rates would not change.

**B. FINANCING**

1. Amount - HAWC and Staff agreed to support HAWC's request for financing up to \$40,000 from Ten Powder Realty, LLC.

2. Interest Rate on Loan – HAWC and Staff recommend that the interest rate on the loan from Ten Powder Realty, LLC be an adjustable rate of 2.25% above the prime rate published in the *Wall Street Journal* on the last business day of the calendar year. As of December 31, 2004, the *Wall Street Journal* published prime rate was 5.25% which results in an initial interest rate of 7.50%, to be adjusted annually again using the *Wall Street Journal* prime rate as of the last business day of the prior year plus 2.25%. At hearing, Staff testified that this interest rate is similar to other HAWC financings approved by this Commission and that it is comparable to rates other small water companies have been obtaining. 9/29/05 Tr. at 45 lines 18-21.

### C. PERMANENT RATES

1. Revenue Requirement – HAWC and Staff agreed to an initial revenue requirement of \$22,527 based upon the following components contained in Exhibit A of the Stipulation:

Rate Base	\$54,883
Rate of Return	7.50%
Operating Income Requirement	\$4,116
Operating Expenses	\$18,411
Revenue Requirement	\$22,527

2. Initial Customer Rate – HAWC and Staff agreed that the following initial customer rate, using the agreed upon revenue requirement, is just and reasonable. The calculation of this rate is contained on Exhibit A, Schedule 4 to the Stipulation:

Annual Base Charge per Customer	\$100
Consumption Rate per 100 cu ft	\$5.43
Estimated annual rate per customer	\$563.00

3. Amendment of Rates – The construction of the Waterford Village water system was not expected to be completed until October 2005. Thus, for the purposes of calculating the initial rate, Staff and HAWC estimated the costs of fixed plant, CIAC, and certain associated operating expenses such as depreciation, amortization of CIAC, and property taxes. For this reason, the actual construction costs may differ from the estimates used to calculate the initial rate contemplated in the Stipulation. HAWC agrees to make available for Commission review the Continuing Property Records for the Waterford Village system within 60 days of the final completion of construction. According to the Stipulation, if the actual construction costs differ from the estimates by greater than 10%, then either HAWC or Staff may petition the Commission to amend the rate based upon the actual costs of construction.

**D. STEP ADJUSTMENT FOR LOCAL PROPERTY TAXES NOT YET ASSESSED**

Staff and HAWC agreed that HAWC is likely to incur liability for local property taxes from the Town of Sandown in the near future for the Waterford Village system. HAWC and Staff agreed that recovery of local property tax liability through rates is appropriate. HAWC and Staff agreed that HAWC should be entitled to a step adjustment in rates for the Waterford Village system for property tax expense at the time the liability is imposed by the Town of Sandown, and in no case shall HAWC seek a step adjustment for property tax expenses after the passage of 24 months from the date of an order approving the Stipulation. If a rate case is filed by HAWC which includes the Waterford Village system, the consideration of recovery of property taxes will be undertaken in that rate case. If the Town of Sandown has yet to assess property tax by the conclusion of the rate case, it is the intent of Staff and HAWC to provide for a continuation of HAWC's ability to seek recovery of the local property taxes assessed through a step adjustment in the future.

**III. COMMISSION ANALYSIS**

**A. Franchise**

Pursuant to RSA 374:22, "[n]o person or business entity shall commence business as a public utility within this state...without first having obtained the permission and approval of the commission." The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is in the public good. RSA 374:26. In determining whether a franchise is in the public good, the Commission assesses the financial, managerial and technical expertise of the petitioner. *See, Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

According to its petition and prefiled testimony, HAWC was approached by developers of Waterford Village and asked to provide water service to the development. HAWC and its predecessor, Walnut Ridge, have been operating water systems in southern New Hampshire for 40 years. *See, Walnut Ridge Water Company, Inc.*, 62 NH PUC 190 (1977). HAWC has previously demonstrated the requisite managerial and technical expertise to operate its various systems and in fact the Commission has recently approved HAWC's request for franchise approval in Docket No. DW 04-055, *Hampstead Area Water Company*, Order No. 24,501 (August 22, 2005). We conclude the record warrants a finding that HAWC possesses the requisite financial, managerial and technical expertise to operate this latest franchise expansion area.

Pursuant to RSA 374:22, III, water companies seeking franchise approval must also satisfy the requirements of DES relating to suitability and availability. We note the filing contains documentation of DES approvals. Staff also testified of continued DES oversight of this water system by virtue of the Chemical Monitoring Program. We believe the record before us adequately substantiates that HAWC complies with RSA 374:22, III.

**B. Purchase of Assets and Financing**

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this State may issue evidences of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." Analysis of the public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates to insure that the public good is protected. *Appeal of Easton*, 125 N.H. 205, 213 (1984). In the instant matter, HAWC intends to purchase the Waterford Village water system assets from Ten Powder Realty,

LLC. Pursuant to the Stipulation, the purchase price is determined as the product of 40 customers times \$1,000 per service connection, or \$40,000. This is the amount HAWC proposes to finance. We note that this amount is substantially lower than Ten Powder Realty, LLC's estimated cost of construction, which is \$267,245. 9/29/05 Tr. at 43 line 18. As indicated earlier, the difference between the actual cost of construction and the purchase price, \$227,245, is being treated as CIAC. We previously found HAWC's methodology for determining CIAC in Docket No. DW 02-128 to be consistent with the public interest and Staff testified the CIAC in this docket was consistent with Order No. 24,362. Based on the record before us, we agree with Staff and believe the CIAC determination in the instant docket accurately follows the guidelines established in Order No. 24,362. Lastly, we conclude that utility ownership of physical assets ensures that water utilities will have control over those assets and can thus better provide the safe and adequate water service required by RSA 374:1. For these reasons, we find HAWC's purchase of the utility assets in Waterford Village is consistent with the public good.

We next review the reasonableness of the proposed rate and its impact upon ratepayers. According to the Stipulation, the interest will be calculated based on the prime rate published in the *Wall Street Journal* on the last business day of each calendar year, plus a margin of 2.25%. We have, in the past, approved interest rates for small water companies where the margin has ranged from 1.5 to 2.75% over the index.<sup>2</sup> In Docket No. DW 02-198, we approved an interest rate for a HAWC loan with Lewis Builders that was 2.25% above prime. *Hampstead Area Water Company, Inc.*, Order No. 24,296 (March 19, 2004). Presumably, the rate variation can be attributed in part to economic conditions and to the water company's perceived risk.

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<sup>2</sup> *Lakes Region Water Company, Inc.*, Order No. 24,401 (November 19, 2004), 3% over FHLBB; *Tilton-Northfield Aqueduct Company*, Order No. 24,169 (May 9, 2003), 2.75% over FHLBB; *West Swanzey Water Company*, Order No. 24,206, (September 5, 2003), 1.5% over prime.

Based on our review of the record and discussion above, we agree with Staff and the Parties that a 7.50% interest rate on the \$40,000 loan is reasonable and will approve the proposed financing.

**C. Permanent Rates and Step Adjustment**

New Hampshire RSA 378:7 authorizes the Commission to fix rates pursuant to an order after a hearing. The Commission is obligated to investigate whether the proposed rate is just and reasonable and “balance the consumers’ interest in paying no higher rates than are required with the investor’s interest in obtaining a reasonable return on investment.” *See, Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). Traditional rate-of-return principles permit a utility to recover prudently incurred operating expenses along with “the opportunity to make a profit on its investment, in an amount equal to its rate base multiplied by a specified rate of return.” *See, Appeal of Conservation Law Foundation*, 127 N.H. 606, 634 (1986). We apply these principles to our analysis of the rates proposed by HAWC.

The rate identified in the Stipulation for Waterford Village consists of a \$100 annual charge per customer plus a consumption rate of \$5.43 per 100 cubic feet. Staff corroborated, through discovery and review of Staff’s audit, the numbers used to determine the \$54,883 in rate base and \$22,527 in revenue requirement. Exh. 1 at 3. The derivation of the per customer charge necessary to produce the required revenue is shown in Exh. 1 at 18. We realize that HAWC’s pending rate case in Docket No. DW 05-112 may impact the stipulated rate for Waterford Village. This docket is attempting to consolidate the rates for the entire HAWC system and we will revisit the Waterford Village rates in the context of that rate case. For the time being, based on this record, we find the rates for Waterford Village are just and reasonable and we approve them. Should a need arise to change these rates, we will take up the matter in Docket No. DW 05-112.



The Stipulation was silent as to the implementation date of this rate. Pursuant to N.H. Code Admin. R. Puc 1203.05, rates are implemented on a service rendered basis. Accordingly, we will approve the rate on a service rendered basis effective the date of this order.

Lastly, HAWC requested at hearing that it be allowed to submit its rate case expenses to the Commission within 30 days of the date of this order. We find this reasonable and we direct Staff to review the rate case expenses and submit a recommendation as to the reasonableness of the expenses sought and we will issue an order thereafter addressing the surcharge.

Having reviewed the record before us, including the Stipulation and supporting testimony, we find the terms of the Stipulation to be reasonable and in the public good. We find the terms will result in just and reasonable rates and that they represent an appropriate balancing of utility and ratepayer interests. Accordingly, we will approve the Stipulation.

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

**ORDERED**, that the Stipulation reached between HAWC and Staff is APPROVED; and it is

**FURTHER ORDERED**, that HAWC shall implement the new rate for Waterford Village on a service rendered basis effective the date of this order; and it is

**FURTHER ORDERED**, that HAWC shall file with the Commission compliance tariffs for Waterford Village within five business days in conformance with this order; and it is

**FURTHER ORDERED**, that HAWC shall file with the Commission within 30 days a total of its rate case expenses for DW 05-070, a proposed recovery period, and an estimate of a proposed surcharge for Waterford Village.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 2005.

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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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Debra A. Howland  
Executive Director & Secretary