

**DW 05-054**

**SACORIDGE WATER, INC.**

**Petition for Permanent Rate Increase and Financing Approval**

**Order Approving Settlement Agreement**

**ORDER NO. 24,561**

**December 9, 2005**

**APPEARANCES:** David A. Eliason for Sacoridge Water, Inc.; Francis X. Lyons for F.X. Lyons, Inc.; and Marcia A.B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

Sacoridge Water, Inc. (Sacoridge) is a regulated public utility pursuant to RSA 362:4 and provides water service to approximately 33 customers in a limited area of the Town of Bartlett, New Hampshire. On May 2, 2005, Sacoridge filed with the New Hampshire Public Utilities Commission (Commission) a notice of intent to file rate schedules. Sacoridge also requested waiver of certain filing requirements of N.H. Code Admin. R. Puc 1604.01. On May 9, 2005, Staff filed a letter recommending that the Commission grant the waivers requested by Sacoridge, and on May 19, 2005, the Commission, by secretarial letter, granted the request.

On June 1, 2005, Sacoridge filed a petition for an increase in its permanent rates, as well as for approval of two loans which Sacoridge had previously received from its parent company, Saco Ridge Corporation. In support of its requests, Sacoridge submitted the prefiled testimony of David A. Eliason, the former treasurer of the utility.

On June 16, 2005, the Commission issued Order No. 24,475 suspending the proposed tariffs and establishing a prehearing conference and technical session for July 21, 2005. Prior to the prehearing conference, the Commission received intervention requests from: Francis

X. Lyons, the certified operator for Sacoridge; and Deborah Eskedahl, Jack Verani, and Geraldyn Karle, all customers of Sacoridge.

Following the prehearing conference, Staff on behalf of itself and the parties submitted a proposed procedural schedule to govern the remainder of the proceeding. The Commission approved the procedural schedule on August 1, 2005.

On September 26, 2005, Staff filed a letter with the Commission indicating that Sacoridge would be filing a motion for confidential treatment of certain tax returns which were being provided in response to a discovery request, and that Staff had no objection to the motion. On October 4, 2005, Sacoridge filed its motion for confidential treatment. Included in the pleading was a summary of the company's rate case expenses that it had incurred through September.

On October 21, 2005, Staff filed a settlement agreement which it had executed with Sacoridge and Mr. Lyons. The Commission held a hearing on the merits on October 27, 2005.

On October 28, 2005, Staff filed with the Commission a recommendation for recovery of rate case expenses which Sacoridge had provided to Staff the day of the hearing. On November 29, 2005, Staff filed a revised recommendation with respect to rate case expenses. Staff asked that the Commission approve \$3,575 in rate case expenses and approve a recovery surcharge of \$13.54, payable over eight billing quarters.

On December 2, 2005, Staff filed a letter with the Commission reporting that the temporary above-ground water lines of the company had been buried. Staff stated it had been contacted by Mr. Lyons who reported that the lines were replaced with buried, two-inch

polyethylene lines. Staff accordingly reported that the company had addressed concerns about the use of above-ground water lines.

## **II. SETTLEMENT AGREEMENT**

The agreement entered in to by Sacoridge, Mr. Lyons, and Staff is described below:

### **A. Permanent Rates**

The signatories recommend the Commission approve a revenue requirement for Sacoridge of \$27,183. This represents a 71.78 percent increase in its revenues. According to the agreement, this revenue requirement will result in an annual flat rate of \$823.72 for each of Sacoridge's 33 customers. The signatories propose that this new rate to customers be retroactive to October 1, 2005, which is the first day of the present billing quarter.

### **B. Late Penalties**

The signatories request that Sacoridge be authorized to charge a late payment penalty in the amount of 1 percent per month, or 12 percent annually. If such a penalty is approved, Sacoridge agrees to file an appropriate tariff supplement..

### **C. Financing**

The signatories recommend the Commission approve two outstanding loans made by the utility's parent company. The first loan is a demand note payable to Saco Ridge Corporation in the amount of \$5,103.25, issued at an interest rate of 5 percent. This note was issued on May 30, 2000, and the proceeds were used for repair expenses incurred for work performed to restore water service. The signatories agree that these repairs were reasonable, necessary and consistent with the public interest. To the extent any of the proceeds of the note added fixed capital to the utility's books, the signatories agree the assets are used and useful in

service to Sacoridge's customers. Sacoridge has not yet made any payments on this loan, according to the signatories

The second financing is a demand note, also issued to Saco Ridge Corporation, in the amount of \$5,850.00 and bears the date of November 20, 2003. This second note carries an interest rate of 5 percent; the proceeds were used to repair the distribution system on Spring Hill Road. The signatories believe these repairs were reasonable, necessary and consistent with the public interest. To the extent any of the proceeds of these notes added fixed capital to the utility's books, the signatories agree the assets are used and useful in service to Sacoridge's customers. Sacoridge has not yet made any payments on this loan as well.

**D. Accounts Payable and Lien**

Sacoridge agrees to pay Mr. Lyons \$600 per month to reduce Sacoridge's outstanding account payable with him.. The signatories agree that these payments would begin 30 days from the date of a Commission order approving the agreement, to be made by the tenth day of each month. The signatories agree that a major service outage could disrupt Sacoridge's ability to make the payments. In such an event, the signatories agree that Sacoridge may stop making payments but must resume as soon as it is able to do so. Mr. Lyons agrees to reduce the existing interest rate applied to Sacoridge's outstanding balance from 18 percent to 9 percent, beginning 30 days from the date of a Commission order approving this agreement.

Sacoridge agrees to negotiate with Mr. Lyons to create a lien on Sacoridge's well lot to secure the debt Sacoridge owes Mr. Lyons. The signatories agree that if the negotiations are successful, that the lien will be recorded with the registry of deeds and that such lien will be enforceable either at the Commission or in civil court.

**E. Water Quality Notification**

Sacoridge agrees to hand-deliver notices of radionuclide or other primary water quality maximum contaminant level violations to each residence in its service area at least once each year, beginning with the next such notice as required by the Department of Environmental Services. The signatories agree the purpose of hand delivery of notices is to ensure that all customers and tenants are aware of ongoing water quality problems and of the availability of bottled water from Sacoridge.

**F. Rate Case Expenses**

The signatories agree that Sacoridge should recover through a customer surcharge reasonable rate case expenses associated with this proceeding. The agreement calls for Sacoridge to submit a report of its rate case expenses within 30 days of the Commission order approving this Agreement. The signatories estimate that, based on a recovery over eight billing quarters, rate case expenses totaling \$3,000 would result in a customer surcharge of \$11.36. Rate case expenses totaling \$3,500 would result in a surcharge of \$13.26.

**III. COMMISSION ANALYSIS**

RSA 378:7 authorizes the Commission to fix just and reasonable rates for a utility upon notice and hearing. We must balance the consumers' interest in paying no higher rates than are required with the investors' interest in obtaining a reasonable return on their investment.

*Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). When a utility wishes to increase rates, it bears the burden of proving the necessity of the increase pursuant to RSA 378:8.

In its initial filing, Sacoridge had sought a revenue requirement of \$33,304, which would have resulted in an annual customer charge of \$1,160.73. The settlement agreement reduces the revenue requirement to \$27,183, which results in a flat rate of \$823.72 per customer.

The agreement specifically requests that the Commission make the new rate effective as of October 1, 2005, the first day of the present billing quarter.

We recognize that the agreement would increase the company's revenue requirement by a substantial amount (71.78 percent) compared with actual revenues from the test year employed in the company's initial filing. However, we note that this would be the first rate increase granted to the company since 1989. The magnitude of the increase is not unexpected given the time that has elapsed since the revenue requirement was last reviewed.

With respect to the late penalties, the signatories agree that an annual rate of 12 percent for application to outstanding balances is reasonable. At hearing, Staff testified that this amount is similar to what other small water utilities regulated by this Commission charge on late payments. 10/27/05 Tr. at 17, lines 18-22. We note that Sacoridge agrees to file an appropriate tariff supplement to implement this late payment charge. We find that the proposed late penalty rate of 12 percent is reasonable and will serve as an incentive for customers to pay their water bills promptly. Accordingly, we approve the late penalty provision.

Next we take up the demand notes given to Saco Ridge Corporation by Sacoridge. RSA 369:1 authorizes public utilities to 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." Application of this standard involves looking beyond the actual terms of the proposed financing considering the use of the proceeds and the effect of the financing on rates. *Appeal of Easton*, 125 N.H. 205, 213 (1984).

Sacoridge moved forward with these loans without obtaining advance approval. At hearing, Staff testified that the funds were needed for emergency repairs to the water system and that the two loans were first intended to be short term. 10/27/05 Tr. at 18, lines 2-12. Had

these obligations remained short-term, because they do not represent more than 10 percent of the utility's fixed plant assets, RSA 369:7 and N.H. Code Admin. R. 608.05 would have allowed Sacoridge to move forward with the financings without our approval. These circumstances serve to explain the utility's technical noncompliance, which we do not expect to recur.

With respect to the terms of the loans themselves, we note that the interest rate is lower than that of other financings we have recently approved for other water companies. *See, e.g., Hampstead Area Water Co., Order No. 24,470 (May 27, 2005).* The proceeds of the loans were to make emergency repairs to the water system. The signatories state that any fixed capital created by the emergency work is presently used and useful. Based on this information, we find the two loans to be reasonable and consistent with the public interest. We therefore approve them.

With respect to the issue of accounts payable, the signatories have included in the agreement two provisions to ensure repayment of an outstanding debt to Mr. Lyons, the certified operator for Sacoridge. Mr. Lyons has been a certified operator for Sacoridge for some time and Staff testified at hearing that, considering the fragile condition of the utility's water distribution system, it is important to keep Mr. Lyons on board in that function. 10/27/05 Tr. at 24 lines 7-11. The first provision calls for Sacoridge to make monthly payments in the amount of \$600 toward an outstanding debt of approximately \$27,000. The signatories recognize, however, that in the event of another major service outage, Sacoridge may need to suspend these payments in order to pay current billings for repair work. Sacoridge agrees to resume making payments to Mr. Lyons as soon as it is able to do so after the major service outage. In exchange for this pledge of regular payments, Mr. Lyons would reduce the interest rate of the late payment charge he has been applying to Sacoridge's outstanding balance from 18 percent to 9 percent, effective

30 days from the date of this order. The second provision included in the agreement related to the accounts payable is to secure the remaining balance of the debt by negotiating a lien on the Sacoridge well lot to the benefit of Mr. Lyons.

At hearing, Mr. Lyons testified that within the next two years, the Lower Bartlett Water Precinct is expected to expand into the Sacoridge service territory, if authorized. 10/27/05 Tr. at 27, lines 22-24 and at 28, lines 1-11. Sacoridge does not object to this development. At the point that Lower Bartlett assumes the provision of water service to the area, the current well lot at Sacoridge would no longer be needed by Sacoridge and the lot could be sold. With a lien on the property in place, Mr. Lyons would be able to recover any balance owed to him by Sacoridge. We believe this approach is sensible and we find it reasonable. It protects the utility and its customers from potentially losing its certified operator and protects Mr. Lyon's interest in receiving payment. Lastly, we note that this lien, depending upon its terms, may implicate RSA 369:2, which requires a utility to seek Commission approval of mortgages that secure the payment of bonds or notes. We direct Sacoridge to file a copy of the lien within 10 days of its execution.

With respect to the issue of hand-delivery of notices relating to water quality violations to each residence in the franchise area, we heard testimony that the signatories had concerns that by mailing these notices to the customers of record, the information might not reach all of the persons actually living in the franchise area and consuming the water. 10/27/05 Tr. at 24, lines 16-24 and at 25, lines 1-2. The signatories aver that hand-delivery to each residence would address this problem and place users on actual notice of the availability of bottled water through Sacoridge, as ordered by the Department of Environmental Services. We



agree this is a sound approach to the problem and find it reasonable. Accordingly, we approve hand-delivery of water quality violations to each resident in the franchise area.

With respect to the proposed recovery of rate case expenses in the amount of \$3,575, the signatories recommend that the applicable surcharge be billed over eight quarters. This amounts to \$13.54 per customer, per quarter, for eight quarters. We agree with Staff's recommendation that the expenses as submitted are reasonable and necessary for Sacoridge's prosecution of its rate case. We also find that the eight quarter recovery surcharge methodology is reasonable. For these reasons, we will approve the recommended rate case surcharge.

An issue raised at hearing that was not addressed by the agreement concerned temporary lines installed above-ground over the past year to bypass leaks. We expressed our concern that the lines might freeze during cold-weather months and that the situation could result in a service outage. Mr. Lyons testified that he expected the cost of burying the lines to be in the range of \$14,000. 10/27/05 Tr. at 40, lines 2-3. Sacoridge testified that its parent company, Saco Ridge Corporation, was willing to provide \$10,000 for the work. Tr. 10/27/05 at 45 lines 8-19. In exchange, Saco Ridge Corporation would take a lien on the utility's well lot, to secure payment of the loan. Staff counsel noted at hearing that the value of the well lot could accommodate liens from Mr. Lyons and Saco Ridge Corporation. 10/27/05 Tr. at 49, lines 3-15. We note that on December 2, 2005, Staff filed a letter with the Commission reporting that the temporary above-ground water lines had been successfully buried. Mr. Lyons advised Staff that the new underground lines consisted of two-inch polyethylene pipe. We believe this adequately addresses our concern that customers could lose service due to frozen pipes.

Having reviewed the record in this proceeding, including the settlement agreement and supporting testimony presented at the October 27, 2005 hearing, we find the

terms of the agreement to be reasonable and for the public good. We find that the terms will result in just and reasonable rates and represent an appropriate balancing of ratepayer interests and the interests of Sacoridge's investors under current economic circumstances. Accordingly, we approve the Agreement as discussed above.

Lastly, in Sacoridge's Motion for Confidential Treatment, pursuant to RSA 91-A:5, IV, it seeks protection of the tax returns of its parent company, Sacoridge Corporation, as provided to Staff in discovery. Among other things, Sacoridge Corporation states that it is not a publicly traded company and it routinely keeps its tax records confidential. RSA 91-A:5, IV provides an exception to the general rule of public disclosure for "confidential, commercial or financial information." Interpreting this provision, the New Hampshire Supreme Court has instructed agencies of state government to construe this exemption narrowly, applying a balancing test in order to determine whether "the asserted private, confidential, commercial or financial interest" is outweighed by "the public's interest in disclosure." *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552-53 (1997). We find that the tax returns of the parent corporation in this case constitute financial information exempt from public disclosure and that the benefits of non-disclosure outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

**ORDERED**, that the Settlement Agreement is **APPROVED** as discussed herein;  
and it is

**FURTHER ORDERED**, that Sacoridge's Motion for Confidential Treatment is  
granted; and it is

**FURTHER ORDERED**, that Sacoridge file a copy of the lien to Mr. Lyons within 10 days of its execution; and it is

**FURTHER ORDERED**, that Sacoridge file with the Commission a compliance tariff within ten days of the date of this order; and it is

**FURTHER ORDERED**, that Sacoridge file with the Commission by June 30, 2006, a status report on the expansion plans of the Lower Bartlett Water Precinct.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 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