

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 14-176

MILL BROOK VILLAGE WATER SYSTEM

Request for Franchise Approval and Permanent Rate Proceeding

Order Granting Approval of Franchise and Permanent Rates

ORDER NO. 25,754

January 14, 2015

In this order, we determine that Mill Brook Village Water System (Mill Brook) is a public water utility as defined by RSA 362:2 and RSA 362:4. We also authorize Mill Brook to provide water service within a franchise area coincident with three real estate developments in the Town of Thornton, New Hampshire, and to charge permanent rates in an amount to recover its \$23,568 revenue requirement. This will result in an annual, per-customer rate of \$636.96, or \$159.24 quarterly. This order and prior docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-176.html>.

I. PARTIES AND PROCEDURAL HISTORY

Mill Brook provides water service to thirty-seven lots within three residential developments located in Thornton, New Hampshire: (1) Mill Brook Village, (2) Brookside Hollow, and (3) The Falls at Mill Brook. Maranatha Construction (Maranatha), an affiliate of Mill Brook, built the water system in 1988 and began developing homes in 1989. Mill Brook serves residential customers living in single-family homes and condominiums. Maranatha

operates the water system on behalf of Mill Brook. James Ingram, Certified Water Operator #1064, owns both Mill Brook and Maranatha, and filed the petitions initiating this proceeding.

The three residential developments served by Mill Brook contain a total of sixty-four lots. Maranatha has sold only twenty-eight lots since 1989 and, based on slow sales activity, does not expect the developments to be fully built out in the near future. Maranatha owns nine lots. Mountain River Development Associates, L.L.C., and Mountain River East Associates, other affiliates of Mill Brook, own the remaining land in the developments.

Mill Brook's service is not metered as required by N.H. Code Admin. R. Puc 603.03 (a). The meter issue is discussed in the Commission Analysis section below.

On February 21, 2014, the Department of Environmental Services (DES) approved Mill Brook's Water Conservation Plan.¹

On June 27, 2014, Mill Brook filed a Petition for Franchise and Permission to Engage in Business as a Public Water Utility within the Town of Thornton. Mill Brook asserted that it possesses the requisite managerial, technical, and financial expertise to provide water service to the requested franchise area. Mill Brook also filed a notice of intent to file rate schedules.

On August 7, 2014, Mill Brook filed rate schedules, pursuant to N.H. Code Admin. R. Chapter Puc 1600, as well as materials supporting its proposed permanent rates. Mill Brook proposed a total revenue requirement of \$36,778, based on \$73,358 of plant in rate base. Rather than allocating the revenue requirement to the sixty-four lots projected for the full build-out of the developments, Mill Brook proposed to recover the revenue requirement from one customer class comprised of the thirty-seven currently-occupied lots. If approved, this allocation proposal

¹ http://des.nh.gov/organization/divisions/water/dwgb/water_conservation/documents/millsbrookvillage.pdf. The DES lists the water system as "Millsbrook" Village Water System, ID #2342110.

would result in a rate of \$994 per year, or, in the alternative, \$248.50 per quarter or \$82.83 per month.

On August 14, 2014, Commission Staff (Staff) filed a letter recommending that the Commission include the issue of temporary rates in its order of notice. On August 28, 2014, the Commission issued Order No. 25,710 suspending the proposed tariff and scheduling a prehearing conference. In a filing dated September 10, 2014, Mr. Ingram attested to providing a copy of this order to its customers as well as the Thornton Town Clerk.

On September 18, 2014, the Commission convened a prehearing conference and technical session. Mill Brook customers John and Valerie Gray and Patti Nocito attended, along with Staff and Mr. Ingram. In a secretarial letter dated September 26, 2014, the Commission authorized Mr. Gray's formal intervention and approved a proposed procedural schedule. No other requests to participate were received by the Commission.

On December 1, 2014, Staff filed a stipulation and supporting schedules (Stipulation) on behalf of itself, Mill Brook, and Mr. Gray (Settling Parties). On December 11, 2014, the Commission held a hearing on the Stipulation. All of the Settling Parties participated in the hearing. There were no substantive changes to the Stipulation at the hearing.²

II. SUMMARY OF STIPULATION TERMS

The Stipulation reflects the Settling Parties' recommendations for the resolution of all issues pending in this proceeding. Specifically, the Settling Parties recommend that the Commission grant the following relief:

² At the hearing, Staff witness Descoteau corrected the title of Attachment B to the Stipulation, Schedule 2B, at 15 (changing the title of Schedule 2B to "Pro Forma Adjustments to Balance Sheet," instead of "Pro Forma Adjustments to Income Statement"). Hearing Transcript of December 11, 2014 ("12/11/14 Tr."), at 13, lines 14-16.

- A franchise area coincident with the boundaries of the three Maranatha developments, Mill Brook Village, Brookside Hollow, and The Falls at Mill Brook, located in Thornton, NH (Exh. 3 at 3, paragraph II.A.);
- An initial revenue requirement of \$23,568, based on total rate base of \$70,259, total operating expenses of \$16,823, and an overall rate of return of 9.60%, yielding an operating income requirement of \$6,745 (Exh. 3 at 3, paragraph II.B.);
- The initial allocation and recovery of the revenue requirement among the current 37 customers equally, at \$636.96 annually or \$159.24 quarterly, effective for service rendered on or after January 1, 2015 (Exh. at 3, paragraph II.C.);
- The mandatory re-allocation of the initial revenue requirement and recalculation of Mill Brook's rate each time a customer is added to its system (Exhibit 3 at 3-4, paragraph II.E.); and
- The filing of an initial tariff as well as any agreements with affiliates required by RSA ch. 366 (Exh. 3 at 4-5, paragraph II.F. and II.G.).

III. COMMISSION ANALYSIS

A. Standards of Review

a. Stipulations

Pursuant to RSA 541-A:31, V(a), informal disposition of a contested case may be made at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. Puc 203.20(b) requires that, prior to approving a settlement, the Commission determine that the settlement is consistent with applicable law and that the results are just, reasonable, and in the public interest.

b. Franchise Authority

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 reviews franchise petitions to ensure that they are consistent with the orderly development of the region. *Pennichuck Water Works, Inc.*, Order No. 18,952 (Dec. 31, 1987). The Commission grants a request for franchise authority upon a finding that it is for the public good. RSA 374:26. The Commission assesses, among other factors, the managerial, technical, and financial abilities of the petitioner. *See Lower Bartlett Water Precinct*, Order No. 23,562 (Sept. 25, 2000). Pursuant to RSA 374:22, III, no water company shall obtain the permission or approval of the Commission to operate as a public utility without first satisfying any requirements of the Department of Environmental Services (DES) concerning the suitability and availability of water.

c. Permanent Rates

The Commission is authorized to fix rates after a hearing if it determines that rates, fares, and charges are just and reasonable. RSA 378:7. The utility bears the burden of proving that its revenue requirement recovers its costs of service to customers, including a just and reasonable return on prudent, used and useful plant, equipment, or capital improvements. RSA 378:8; RSA 378:28.

In determining whether rates are just and reasonable, the Commission must balance the customers’ interest in paying no higher rates than are required against the investors’ interest in obtaining a reasonable return on their investment. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In this way, the Commission serves as an arbiter between the interests of customers

and those of utility's owners. *See* RSA 363:17-a; *see also Northern Utilities, Inc.*, Order No. 25,352 (April 24, 2012) at 7.

The Commission exercises its discretion and judgment in striking this balance. *See Appeal of Conservation Law Foundation*, 127 NH 606, 634-36, 638 (1986) (recognizing the role of the Commission's discretion and judgment in setting variables used in the revenue requirement calculation); *see also Public Service Company of NH*, 90 NH PUC 542, 559 (2005), *rehearing denied, Public Service Company of NH*, 91 NH PUC 49 (2006). A just and reasonable rate is, generally, one that satisfies the utility's revenue requirement, which roughly equates to the utility's prudently-incurred operating expense, the utility's investment in prudent, used and useful plant (less depreciation), and a reasonable rate of return on that investment to compensate the utility's investors (*i.e.*, debt or equity) for the time value of their money. *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. at 633-634 (citations omitted). *See also* 12/11/14 Tr. at 11, lines 3-17 (describing Commission's traditional ratemaking formula).

B. Mill Brook's Franchise Request

The Commission grants Mill Brook's franchise request as proposed in the Company's filing as well as the Stipulation. *See* Exh. 1, and Exh. 3, paragraph II.A. Mill Brook possesses the requisite managerial, technical, and financial abilities to provide safe and adequate service to customers within this franchise. 12/11/14 Tr. at 22, lines 9-15. Also, Mill Brook's system possesses the appropriate supply capacity to serve this franchise area. *Id.* at 30, lines 4-13. Although not evidence, Mr. Gray's statements at the hearing about Mill Brook's service and service quality are consistent with the Commission's decision to approve the franchise request. *Id.* at 32, line 12, to 33, line 24.

C. Mill Brook's Permanent Rates

The Commission grants the terms of the Stipulation related to permanent rates. *See* Exh. 3 at 3-4, paragraphs II.B, C., D., and E; *id.* at 9-19, Attachment B, revenue requirement schedules. The rates are based on a revenue requirement that includes only the costs associated with prudent, used and useful plant in service to customers. 12/11/14 Tr. at 22, lines 16-21. The recommended revenue requirement was fully vetted during these proceedings and recommended by the Settling Parties as a basis for a just and reasonable rate.

The Settling Parties sufficiently supported their proposal that the initial permanent revenue requirement be allocated equally across the thirty-seven existing customers at this time. An equal distribution is appropriate due to the lack of meters, discussed further below, as well as the relative homogeneity of the customers in terms of usage characteristics. All customers are single families living in homes and condominiums. In addition, requiring Mill Brook to allocate its revenue requirement across the more than sixty potential customers at this time would likely result in Mill Brook's under-earning immediately following this rate case. Such a result would not be consistent with the Commission's obligation to set just and reasonable rates.

Adjusting rates with the addition of each new customer appropriately complements the proposed initial revenue requirement allocation over less than all the lots within Mill Brook's system. By timely re-allocating the revenue requirement across a greater number of customers without any other adjustments, *id.* at 20, lines 4-12, customers are protected from paying more than their fair share of the costs of service. Indeed, the customers benefit from the requirement that the recalculation be made as of the beginning of the quarter in which the customer is added. Although unique, this requirement is a just and reasonable resolution given the circumstances of this very small water system.

One such circumstance that the Commission considered in approving the proposed allocation of the revenue requirement was the proposed restriction of the rate base value to the costs of only recent additions to plant. 12/11/14 Tr. at 14, line 7, to 15, line 7. By not including more than \$500,000 worth of expensed plant in Mill Brook's revenue requirement calculation, *see* Exh. at 11, Attachment B, Schedule 2, Rate Base, the Settling Parties ensure that Mill Brook's customers do not pay any profit associated with this capital investment, while still receiving the benefits of service from this plant. *Id.* at 15, lines 9-13.

D. Initial Tariff and Affiliate Agreements

The Commission approves the requirements that Mill Brook file its initial tariff and any affiliate agreements required by law within 21 days of this order. Staff testified that it will work with Mr. Ingram to finalize the compliance tariff. *Id.* at 21, line 1, to 22, line 7; *see also* Exh. 3 at 3, paragraph F. Staff noted its concerns about certain proposed fees (*e.g.*, collections fee). *Id.* Staff intends to work with Mill Brook to ensure that all the fees in the tariff are cost-based. *Id.* Staff may similarly work with Mill Brook to prepare any necessary affiliate agreements. *Id.* at 28, lines 9-21.

E. Temporary Waiver of Metering Rule

The Order of Notice observed that Mill Brook does not provide metered service as is required by Commission rule, Puc 603.03. Staff testified that it had considered this issue in its investigation, but did not recommend any action by the Commission in the Stipulation. 12/11/14 Tr. at 16, line 2, to 17, line 8. Staff decided not to recommend Commission action primarily because the utility serves a relatively uniform class of customers – single-family, residential homes and condominiums. *Id.* Staff also testified that the structures in the franchise area were not built to accommodate meters. *Id.* Staff and Mr. Ingram agreed to work together toward the

filing of a motion for waiver of Puc 603.03. *Id.*, at 17, lines 5-8 (Staff testimony), and at 26, lines 5-9 (Mr. Ingram testimony).

The Commission agrees that Mill Brook should take some action to address its compliance – or lack thereof – with Puc 603.03. Consequently, the Commission requires Mill Brook to file a request for waiver of the rule pursuant to Puc 201.05 within sixty days of the date of this order.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the Stipulation are hereby adopted and APPROVED as discussed herein; and it is

FURTHER ORDERED, that Mill Brook's Petition for Franchise and Permission to Engage in Business as a Public Water Utility within the Town of Thornton is GRANTED; and it is


FURTHER ORDERED, that that Mill Brook is authorized to collect from customers permanent rates, as discussed herein, effective for service rendered on or after January 1, 2015; and it is

FURTHER ORDERED, that Mill Brook file with the Commission tariff pages in compliance with this order within twenty-one days of the date of this order; and it is

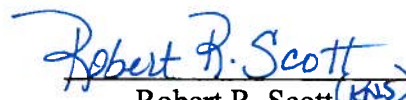
FURTHER ORDERED, that Mill Brook file with the Commission any affiliate agreements required by law within twenty-one days of the date of this order; and it is

FURTHER ORDERED, that Mill Brook file with the Commission a request for waiver of Puc 603.03 within sixty days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of
January, 2015.



Martin P. Honigberg
Chairman



Robert R. Scott (KRS)
Commissioner

Attested by:



Debra A. Howland
Executive Director