

1 STATE OF NEW HAMPSHIRE  
2 PUBLIC UTILITIES COMMISSION  
3

4 September 3, 2008 - 11:12 a.m.  
5 Concord, New Hampshire

6 RE: DW 08-088  
7 HAMPSTEAD AREA WATER COMPANY:  
8 Petition for Authority to Borrow  
9 Long-Term Debt, to Construct Water  
10 System Interconnection, Approval to  
11 Extend Franchise Area and for Step  
12 Rate Increase. (Prehearing conference)

13 PRESENT: Chairman Thomas B. Getz, Presiding  
14 Commissioner Graham J. Morrison  
15 Commissioner Clifton C. Below

16 Connie Fillion, Clerk

17 APPEARANCES: Reptg. Hampstead Area Water Company:  
18 Robert C. Levine, Esq.

19 John Wolters, pro se

20 Reptg. Residential Ratepayers:  
21 Rorie Hollenberg, Esq.  
22 Stephen Eckberg  
23 Office of Consumer Advocate

24 Reptg. PUC Staff:  
Marcia A. B. Thunberg, Esq.

25 Court Reporter: Steven E. Patnaude, LCR No. 52

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## I N D E X

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STATEMENTS OF PRELIMINARY POSITION BY:

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Mr. Levine

5, 14

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Mr. Wolters

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Ms. Hollenberg

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Ms. Thunberg

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the prehearing conference in docket  
4 DW 08-088. On June 27, Hampstead Area Water Company filed  
5 a petition for authority to borrow long-term debt, to  
6 extend its franchise area, and for a step increase in  
7 rates. It seeks to borrow \$1,100,885 from the State  
8 Revolving Loan Fund to fund the construction of an  
9 interconnection between its two core systems in the Towns  
10 of Hampstead and Atkinson. Order of notice was issued on  
11 July 30 setting the prehearing conference for this  
12 morning.

13 I'll note for the record that we have a  
14 letter from the Consumer Advocate indicating that it would  
15 be participating in the proceeding. We also have the  
16 affidavit of publication. And, we have a Petition to  
17 Intervene from it looks like two citizens of the Town of  
18 Atkinson.

19 So, at this point, can we just take  
20 appearances for the record, and then we'll hear a  
21 statement of the positions from the parties.

22 MR. LEVINE: Thank you, Commissioner.  
23 Attorney Robert Levine, attorney for Hampstead Area Water  
24 Company. With me today is Stephen St. Cyr, our

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1 consultant; our Controller, John Sullivan; our Vice  
2 President, Christine Lewis Morse; our President Harold  
3 Morse; and Charlie Lanza from our Engineering Department.

4 CHAIRMAN GETZ: Good morning.

5 CMSR. MORRISON: Good morning.

6 CMSR. BELOW: Good morning.

7 CHAIRMAN GETZ: If it's Ms. Grant or Mr.  
8 Wolters, if you could just identify yourselves for the  
9 record?

10 MR. WOLTERS: Yes. John Wolters and  
11 Shirley Davis, and she's not on the petition.

12 CHAIRMAN GETZ: Okay. And, from the  
13 Town of Atkinson?

14 MR. WOLTERS: Yes.

15 CHAIRMAN GETZ: Okay. Thank you.

16 MS. HOLLENBERG: Good morning again.  
17 Rorie Hollenberg and Stephen Eckberg, here for the Office  
18 of Consumer Advocate.

19 CHAIRMAN GETZ: Good morning.

20 CMSR. MORRISON: Good morning.

21 CMSR. BELOW: Good morning.

22 MS. THUNBERG: Good morning,  
23 Commissioners. Marcia Thunberg, on behalf of Staff. And,  
24 with me today is Mark Naylor, Jim Lenihan, Jayson

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1 LaFlamme, and Doug Brogan and Stu Hodgdon. Thank you.

2 CHAIRMAN GETZ: Thank you. And, I don't  
3 know if you've been advised of the process, but what we'll  
4 do now is everybody gets a chance to state their position  
5 on the record. So, Mr. Levine.

6 MR. LEVINE: Thank you, Commissioner.  
7 The Company is requesting authorization to borrow  
8 \$1,100,885 from the State of New Hampshire State Revolving  
9 Loan Fund as administered by DES for the interconnection  
10 with the Hampstead core and the Atkinson core systems.  
11 We're asking that the Commission find that it would be in  
12 the public good to have that financing approved, and also  
13 that the approval of the project for which the financing  
14 is being requested is also prudent and consistent with the  
15 public interest. We're asking that the Commission also  
16 approve a rate increase, a step increase attributable to  
17 the repayment of the financing as part of this docket, and  
18 also approve an expansion of our franchise so that we may  
19 serve customers that will then be in the area that the  
20 interconnection shall be coursing through.

21 As the Commission noted, there was a  
22 Petition to Intervene, which was filed with the  
23 Commission, it's dated August 20th. I have a objection  
24 that I wish to file with the Commission to the Petition

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1       for Intervention. I have provided copies to Mr. Wolters,  
2       the OCA, and to Staff.

3                   CHAIRMAN GETZ: Okay. Do you want to  
4       summarize this objection or do you want to just rest on  
5       the papers?

6                   MR. LEVINE: I can summarize it.  
7       Basically, the issue cited in the Petition to Intervene is  
8       based on an ordinance that had been passed by the Town of  
9       Atkinson that prohibits the transport of water outside of  
10      town boundaries. Our position is that the people who are  
11      seeking to intervene are neither customers of the water  
12      company or within the route for the proposed  
13      interconnection. The Town of Atkinson has not filed any  
14      appearance in this docket. They're the ones charged with  
15      the enforcement of the ordinance. We feel that the  
16      ordinance is not appropriate for the Commission to enforce  
17      and outside of its jurisdiction as a statutory agency.  
18      It's more appropriate for the state court to take up the  
19      validity or the enforcement of such an ordinance.

20                   We're concerned about the intervenors  
21      having party status. We feel that it would unduly  
22      complicate the proceedings. We think that their concerns  
23      are more appropriately raised as part of public comment,  
24      as provided in the statute. For all those reasons, we

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1     feel it's within the discretion of the presiding officers  
2     to not allow intervention on these issues as part of the  
3     interconnection proceeding. Thank you.

4                   CHAIRMAN GETZ: Thank you. Mr. Wolters,  
5     and also if you could clarify, in the Petition to  
6     Intervene, it says it's "for the Petitioners and  
7     supporting voters of both Atkinson Special Town Meetings".  
8     So, I want to clarify, is -- do you have some official  
9     capacity on behalf of the town or on behalf of other  
10    individuals, or is this filed basically individually?

11                   MR. WOLTERS: It was filed individually.  
12    However, I do have petitions here of 60 individuals when  
13    we placed this on the docket originally. We also held  
14    several town meetings in which we invited the entire town.  
15    And, we had a vote on that particular ordinance, and it  
16    was approved 70/30. I mean, the Town is really very much  
17    enthusiastic enforcing that type of the thing, the people  
18    there. And, the reason I've come today, not that  
19    intervening is exactly the PUC's, from what I'm hearing,  
20    it isn't what you're looking for, our concern is that for  
21    the past six years they have only had a 7,000 gallon a day  
22    growth, 7,000 gallon a day. They're asking for, by 2010,  
23    100,000 gallon increase. And, by 2014, a 250,000 gallon a  
24    day increase. The total amount, from what they're taking

1     now, plus what they want to take, and 16 percent that  
2     they're allowed for waste, comes to 442 million gallons a  
3     year from this town of 6,600 people. They have wells  
4     they've drilled up to 840 feet deep. I know of no one in  
5     the town that has a well near that depth. They have wells  
6     from 100 to 400 feet. And, as you know, you draw water,  
7     that type of quantity of water, it's going to -- it could  
8     lower the level of which you're pumping water out at a lot  
9     lower than their wells. There's no means in their  
10    application to cover if people get harmed from their  
11    drawdown.

12                   And, we do have an ordinance that asked  
13    them not to sell water outside. If it's consumed in the  
14    Town, we don't object to that. But the town people do not  
15    want the water sold to other towns. And, that is the  
16    intent of why I'm here. I just happen to be the president  
17    of a condo association that has 121 voters. And, I have  
18    numerous petitions that other people have signed here.  
19    But I'm just a layperson who's interested in the  
20    community. These people have a money motive, and they're  
21    not considering the intent of what's in the best interest  
22    of that community.

23                   CHAIRMAN GETZ: Okay. Do you want to  
24    respond at all to the objection to your intervention?

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1                   MR. WOLTERS: Well, I think what they're  
2 mentioning, it's involved as to what I put down on the  
3 intervention, but there's more to it than that. I could  
4 see, because of my lack of experience, I didn't put down  
5 enough of like I'm trying to point out now. In their  
6 application, as I've already stated, they have only had a  
7 growth of 7,000 gallons a day, and yet they're asking for  
8 250,000 gallons over the next six and a half, seven years.  
9 There's an intent beyond the community. Nowhere in that  
10 application does it say that "we need it for this road and  
11 this road and these people and that people." They want to  
12 sell it elsewhere. That's exactly what the people there  
13 do not want. And, I ask the Commission not to approve  
14 their loan for this purpose.

15                   CHAIRMAN GETZ: Thank you. Well, if  
16 there's any other paperwork that you have that you want to  
17 file, make sure that the Clerk gets it before you leave  
18 today.

19                   MR. WOLTERS: Okay. Thank you.

20                   CHAIRMAN GETZ: Thank you.  
21 Ms. Hollenberg.

22                   MS. HOLLENBERG: Thank you. I'll be  
23 brief. The Office of Consumer Advocate has already  
24 addressed its opposition to the requested rate increase

1       within this financing docket. And, so, I won't repeat  
2       what I've said earlier in the prehearing conference on DW  
3       08-065. However, I do ask that the Commission take  
4       administrative notice of those statements. And, I also  
5       ask that the Commission take administrative notice of a  
6       statement of the Company in that prehearing conference, in  
7       response to a question posed by Chairman Getz, that the  
8       Company will not begin repayment of the SRF loan until the  
9       later part of 2009.

10                       Moreover, I would just make the  
11       statement that we do take no position on the Petition to  
12       Intervene. Thank you.

13                       CHAIRMAN GETZ: Thank you.  
14       Ms. Thunberg.

15                       MS. THUNBERG: Yes. Thank you,  
16       Commissioners. And, like OCA, Staff has yet to form a  
17       position on the Company's petition at this stage of the  
18       proceeding. But, given that discovery will occur in this  
19       proceeding, we will offer our position on the petition at  
20       a later point. Staff is aware that DES is pushing for  
21       this interconnection, but Staff will come up with its own  
22       conclusion.

23                       With respect to the intervention  
24       request, as presented on the motion, on the Petition to

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1 Intervene, it was Staff's understanding that enforcement  
2 of the ordinance or the Commission's assistance in  
3 breaching the ordinance was the crux of the intervenors'  
4 argument. And, on that point, Staff does not believe or  
5 it would be Staff's position that the petitioners have not  
6 met the requirements of 541-A:32 that the rights, duties,  
7 and privileges would be impacted by this proceeding. And,  
8 that is because this ordinance that's attached to the  
9 petition does have a citizen enforcement clause, and there  
10 has been no enforcement of this ordinance yet. If that  
11 were the case, the Company could proceed under 674:30 and  
12 request the municipality to waive the ordinance. If they  
13 were unsuccessful there, they could come here and we would  
14 have a specific docket dealing with the issue of whether  
15 to waive that, the ordinance that has been attached to the  
16 petition.

17 Now, enforcement is not before this  
18 Commission, it would be to Superior Court. There is no  
19 Superior Court action yet. If there were, then Staff  
20 would concede that there would be rights, duties, and  
21 privileges that would overlap with the proceeding  
22 continuing here.

23 There's another point I wish to make.  
24 The ordinance does make state employees, agencies liable

1 under the ordinance, and Staff is only aware of RSA 541-B  
2 as where the Legislature had made a -- had carved out very  
3 few exceptions to the sovereign immunity clause, where  
4 state agency employees acting under their employment could  
5 be subject to liability.

6 Having said that objection, in talking  
7 with the intervenors, it seems, even though they are not  
8 customers, they are concerned with the development water  
9 use of the general area. This is a franchise area. I'm  
10 not sure if they are specifically within the franchise  
11 area. But, even if they're not, they may be adjacent,  
12 they may be future customers. And, if the intervenors are  
13 interested in this docket because of the planning for  
14 water use in the area, then Staff would concede that they  
15 do have rights, privileges, and duties and would satisfy  
16 the intervention of 541-A:32.

17 So, our position with respect to the  
18 intervention is two-fold. One, objection -- objecting  
19 based on what is written. And, the other concurring with  
20 the request if it is more or if it's enlarged to concerns  
21 about water use in the Town of Atkinson where they reside.  
22 Thank you.

23 CHAIRMAN GETZ: Thank you. Well, let me  
24 return to the issue of the Motion to Consolidate, and let

1 me confirm this with you, Ms. Hollenberg. What I take the  
2 OCA's motion is really solely with the issue of the step  
3 increase, and that your proposal is that the step increase  
4 be considered in the context of the rate case, is that  
5 accurate?

6 MS. HOLLENBERG: Yes, sir.

7 CHAIRMAN GETZ: And, we haven't had the  
8 opportunity to deliberate this issue. Let me just express  
9 my personal concerns at this juncture. First, is that the  
10 notion of a step increase, while a rate proceeding is  
11 going on, raises questions in my mind about "should we  
12 being going down two paths?" But, I think, to resolve  
13 that issue, need to be clear on a question of fact, "then  
14 what is the DES's requirement in this regard?" And, there  
15 seems to be different characterizations of a phone call  
16 and past practice. I think we need to hear something  
17 directly from DES, something in writing and something with  
18 some specificity about this particular case and what it  
19 requires in order to approve the Revolving Fund loan.  
20 And, I think that's the critical piece before we can make  
21 a decision about the step increase. So, if we could get  
22 something in writing from DES, if Staff could reach out or  
23 Staff and the OCA and the Company, however the parties  
24 want to proceed on that is up to the parties.

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1                   Is there any other questions in that  
2 regard? Any other issues?

3                   (No verbal response)

4                   CHAIRMAN GETZ: Any other issues that  
5 the parties want to raise this morning? Mr. Levine.

6                   MR. LEVINE: Just in response to  
7 Mr. Wolters' statements. Our water usage and the -- what  
8 he's referring to is the large groundwater petition that  
9 is before -- application that is before DES. And, it just  
10 again raises a concern as to the orderly proceeding of  
11 this particular docket, and without complicating it with  
12 outside issues. And, it does raise concerns for the  
13 Company in just obtaining the relief that we're  
14 requesting, as far as the financing goes for this  
15 interconnection. Those monies with the SRF financing  
16 again are rotating and prioritized. And, it is our  
17 concern that they be available.

18                  CHAIRMAN GETZ: Thank you. Anything  
19 further this morning?

20                  (No verbal response)

21                  CHAIRMAN GETZ: Okay. Hearing nothing,  
22 then we'll close the prehearing conference and await some  
23 kind of formal contact from the Department of  
24 Environmental Services, and take the matter under

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1       advisement. Thank you, everyone.

2                       MR. LEVINE: Thank you.

3                       (Whereupon the prehearing conference

4                       ended at 11:30 a.m.)

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