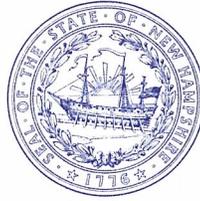


THE STATE OF NEW HAMPSHIRE

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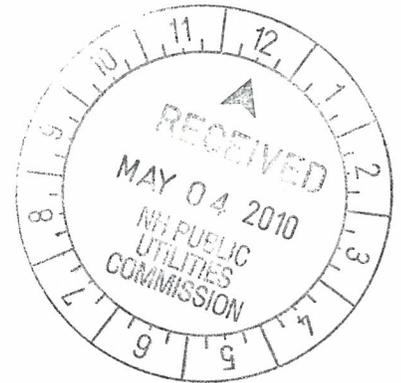
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May 3, 2010

Debra A. Howland, Executive Secretary and Director
Public Utilities Commission
21 South Fruit St., Ste. 10
Concord, NH 03301

**Re: DW 06-104 Hampstead Area Water Company
Petition for Approval of Financing and Step Increase
Motion to Amend Petition**



Dear Ms. Howland:

The OCA writes in response to the Motion to Amend Petition for Approval of Financing and Step Increase (Motion to Amend) filed by Hampstead Area Water Company, Inc. (HAWC) on April 20, 2010. Please add Rorie E.P. Hollenberg, Stephen R. Eckberg, and OCA Litigation to the service list for this docket.

In July 2006, Hampstead Area Water Company, Inc. (HAWC) filed a Petition for Approval of Financing and Step Increase (Petition), docketed as DW 06-014. In pertinent part, HAWC sought permission to finance, and recover through an increase in rates, the costs of a hydrology study of its Atkinson “core” system. At the time of its filing, HAWC had selected Hydroterra Environmental Services, LLC (Hydroterra) for the study, which included among other deliverables the exploration and development of new sources of supply. *See* Petition at p. 2, para. 3.f. HAWC estimated that the costs for Hydroterra’s services, as well as “other services” and equipment, would total \$162,069.50. *Id.* at p. 3, para. 4. HAWC proposed to finance this amount through a five-year loan from its affiliate Lewis Builders Development, Inc. (LBDI), at a rate of 10.5%. *Id.* and Exhibit 6a (Hydrology Promissory Note). HAWC also proposed a step increase in rates, to recover the additional revenue requirement associated with the proposed financing, upon completion of the study. *Id.* at p. 3, para. 9. In its filing, HAWC projected that the study would be complete “by the end of the year.” Exhibit 5, Testimony of St. Cyr, p. 5.

In February 2007, the Commission approved a settlement agreement between HAWC and Commission Staff. *See* Order No. 24,728 (February 2, 2007). In pertinent part, the settlement agreement authorized HAWC to finance \$162,069 to cover the costs of the hydrology study and to seek recovery of these costs through a step adjustment, after the completion of the study and a

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DW 06-104 HAWC Petition for Approval of Financing and Step Increase
OCA Response to HAWC's Motion to Amend Petition

review by the Commission of the final costs. *Id.* at pp. 2, 4-7. The settlement also required HAWC to pursue financial grants and technical assistance through the New Hampshire Department of Environmental Services (NH DES), to mitigate the costs of the study, as well as to report to the Commission on the status of those efforts. *Id.* at p. 3.

Following the Commission's approval of the settlement agreement, HAWC filed two reports, both in February 2007, concerning the status of its efforts to secure grant funding of the hydrology study. *See* HAWC letters to Commission dated February 9 and February 16, 2007. Therein, HAWC indicated that it had applied for a Groundwater Investigation (SIGI) grant in the amount of \$15,000 and that another grant, a Water System Security Installation Grant, in the amount of \$2,275, had been awarded to HAWC. *Id.*

In June 2007, HAWC filed a letter notifying the Commission of its substitution of Hydroterra with a "more experienced firm," Emery & Garrett. HAWC explained,

Due to the unfavorable decision of the Department of Environmental Services on the initial preliminary application prepared by Hydroterra, it was decided that a more experienced firm was in the Company's best interest . . . Emery & Garrett will be taking over the work that Hydroterra started. The contract price for [Emery & Garrett] is comparable [to the contract price for Hydroterra]. Therefore, the contracted amount attributable to the applicable portion of the previously approved financing under this docket remains the same.

HAWC letter to Commission dated June 7, 2007. HAWC's letter enclosed a copy of a contract with Emery & Garrett. The contract included production well drilling and the conversion of test wells to production wells at a price "to be determined." *Id.* at p. 1 of Emery and Garrett Service Contract. Based upon the Commission's docket-book, no further activity took place in this proceeding until April 20, 2010, when HAWC filed its Motion to Amend.

HAWC's Motion to Amend seeks approval of a substantial increase in the originally approved financing associated with the hydrology study. HAWC also seeks authorization to begin collection, through an increase in consumption rates, of the costs associated with the increased financing as well as the costs associated with three test wells. Specifically, HAWC quantified the "actual cost" of the study as \$286,133, the cost of the three "not productive" test wells as \$70,142, and financing costs of \$10,750.50. *See* Motion to Amend at pp. 2 and 4. HAWC contends that the unproductive test wells are appropriate to include within the study costs, resulting in a new total amount financed for the hydrology study of \$356,275, more than double the original estimate. *Id.* In its filing, HAWC proposes to increase its revenue requirement by \$97,647, which, if approved, would result in a 6.82% increase in rates. *Id.* at p. 3.

The OCA did not participate in the original phase of this docket, but it did participate in two recent dockets at the Commission, which concerned proposed rate increases for HAWC. In one of those dockets, DW 08-088, the OCA opposed a proposed step increase associated with the financing of an interconnection of HAWC's core systems. The OCA took the position in that

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DW 06-104 HAWC Petition for Approval of Financing and Step Increase
OCA Response to HAWC's Motion to Amend Petition

docket that the proposed step increase constituted single-issue ratemaking and that the costs related to the financing of the proposed interconnection should be considered within the context of the Company's then-pending base rate case (DW 08-065). The OCA recognizes that the financing and step adjustments approved in DW 06-104 pre-dated the proceedings in DW 08-088; as such, the time has passed to challenge the appropriateness of allowing such a non-rate-case step increase. Nonetheless, we continue to maintain the position that step adjustments like the one authorized in DW 06-104 should be reviewed and considered only within the context of a base rate case.

With regard to the specific relief requested by HAWC in its April 20 filing, the OCA urges the Commission and its Staff to carefully scrutinize the reasons for the dramatic increase in the costs of the hydrology study. The OCA questions whether the replacement of the original contractor mid-study contributed to the costs. For instance, did Emery & Garret re-do any of the work done by Hydroterra? If so, HAWC's customers should not have to pay twice for that work.

The failure of Hydroterra to successfully assist HAWC with its large groundwater application as well as repeated references in HAWC filings to the "more experienced" nature of the services provided by Emery & Garrett suggest to the OCA that Hydroterra may not have been qualified to perform the study. If that was the case, the Commission should consider whether any of the costs associated with Hydroterra should be disallowed from the recovery borne by HAWC's customers.

Also on the issue of the increased cost of the study, the OCA questions the Company's representations to the Commission, in its June 2007 filing (the last filing in this docket before the Motion to Amend nearly two years later), that the price for Emery & Garrett was "comparable" to the price for Hydroterra and that the contracted amount previously approved "remains the same." Were these representations accurate? Is there a reason to disallow the increased costs of the study on account of these assurances? Are any of the increased costs related to tasks that were not approved for inclusion in the study process under Hydroterra such that disallowance is appropriate?

Additionally, the Commission's order approving the financing in this case required HAWC to seek grants and technical assistance from NHDES. Did HAWC avail itself of all available assistance in this regard? What was the outcome of the SIGI grant referred to in HAWC's February 2007 letters? Is the amount of the proposed revenue increase net of this grant? Is the proposed revenue increase net of the Water System Security Installation Grant which HAWC was awarded?

With regard to any interest associated with the original hydrology study debt and included in the proposed revenue increase, what accounts for the difference between the interest rate agreed to by HAWC in DW 08-065 (5.5%, *see* Settlement Agreement at p. 6, paragraph 4) and the proposed rate of 6.2124% (*i.e.*, is the difference attributable to the addition of the financing costs or is HAWC proposing a new higher rate)? Also, to what extent was the cost of the original

DW 06-104 HAWC Petition for Approval of Financing and Step Increase
OCA Response to HAWC's Motion to Amend Petition

hydrology study debt considered in setting rates in DW 08-065 such that it would result in double counting to include it again in the calculation of a rate increase now?

Another issue that the OCA asks the Commission to investigate relates to the proposed recovery of expenses related to the hydrology study (e.g., "PUC Related Costs"). These include costs associated with work by HAWC's General Counsel, Robert Levine, Esq. as well as costs associated with work by Stephen St. Cyr. For 2007, these costs total more than \$117,000. Were any of these costs included in the calculation of the revenue requirement in HAWC's last base rate case, DW 08-065 (which was based upon a 2007 test year)? If the answer is yes, these costs, which are already in rates, should be excluded from the calculation of the proposed step.

In addition, why does HAWC propose to treat Attorney Levine's costs as if he were an outside consultant? Although technically Attorney Levine is an employee of a HAWC affiliate, other utilities in New Hampshire regularly use employees of affiliates in cases at the Commission but do not recover the associated costs through a rate case surcharge like the one proposed for Attorney Levine's time. For example, general counsel for Unitil Service Corp. (USC) represents Unitil Energy Service, Inc. (UES) in rate cases at the Commission, but the time he spends on the case is not billed for separately from the allocation by USC to UES. To the extent that HAWC's rates already include costs related to Attorney Levine's services, HAWC should not recover additional amounts for his expenses through the hydrology study step adjustment.

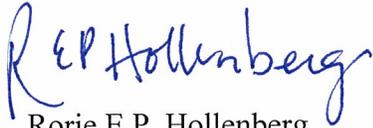
With regard to HAWC's proposal to include the costs of three unproductive wells as an incremental addition to the costs of the study, the OCA urges the Commission to consider the extent to which the development of new wells was already contemplated by and included with the costs of the study that was originally approved. Based upon the language of the contracts filed with the Commission, it appears that new sources of supply were included within the costs of the study. Also, the Commission should consider why these unproductive wells are appropriately included within the costs of the hydrology study, yet two other "test" wells – Settlers Ridge and Fieldstone test wells – are not?

In addition, HAWC's request for approval of increased financing in this case occurs well after HAWC incurred the increased costs and well after HAWC exceeded the originally amount of financing approved by the Commission in February 2007. RSA 369:1 et seq. requires utilities like HAWC to seek approval of long-term debt before incurring it. This is not the first time that HAWC has failed to seek pre-approval of long-term debt. In DW 08-065, HAWC agreed, and the Commission authorized it, to convert to equity approximately \$1,000,000 worth of receivables, which had been on HAWC's accounts for much more than the statutory limit of twelve months. Here again, HAWC seeks post-facto approval of long-term debt already incurred. Instead, HAWC should have sought approval for additional financing before it exceeded the originally approved amount of \$162,069. In light of HAWC's failure to abide by the requirements of RSA 369, and considering the fact that this is not the first time it has failed to do so, the OCA suggests that the Commission consider whether any penalties are appropriate. See RSA 365:41 (penalty against utility) and 365:42 (penalty against agent).

DW 06-104 HAWC Petition for Approval of Financing and Step Increase
OCA Response to HAWC's Motion to Amend Petition

In closing, the OCA asks the Commission to issue a new order of notice and require HAWC to directly notify its customers of its new proposal to increase rates. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Rorie E.P. Hollenberg". The signature is written in a cursive style with a large initial "R".

Rorie E.P. Hollenberg
Staff Attorney

cc: Service List

