

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 10-159

WEST SWANZEY WATER COMPANY, INC.

Permanent Rate Increase Proceeding

Order Approving Permanent Rates

O R D E R N O. 25,203

March 15, 2011

APPEARANCES: Stephen P. St. Cyr & Associates, by Stephen P. St. Cyr for West Swanze Water Company, Inc. and Marcia A. B. Thunberg, Esq., on behalf of Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

West Swanze Water Company, Inc. (West Swanze) has been a regulated water utility since 1988 and currently serves approximately 76 residential customers in the Town of Swanze.¹ It also provides private fire protection service to 5 customers. On June 7, 2010, West Swanze filed a notice of intent to file rate schedules and a request for waiver from filing requirements contained in N.H. Code Admin. R. Puc 1604.01(a), specifically: monthly and quarterly reports; stockholder reports; advertising, cost of service, and expense reports; and Securities and Exchange Commission filings.

On August 6, 2010, West Swanze filed a request for an extension of time to file its rate schedules, which was granted by secretarial letter dated August 13, 2010. On September 8,

¹ See, *West Swanze Water Company, Inc.*, Order No. 19,239, 73 NH PUC 475 (1988) (Order approving franchise, original customers totaled 40 with the expectation that West Swanze would serve 100 customers within 5 years. Rates were set at \$6.82 per month and \$0.566 per 100 gallons consumed.) See, *West Swanze Water Company, Inc.*, Order No. 19,515, 74 NH PUC 287 (1989) (Order approving franchise expansion to Hillwood Mobile Home Park, Pine Acres Mobile Home Park, and area in between.) See, *West Swanze Water Company, Inc.*, Order No. 24,128, 88 NH PUC 77 (2003) (Order approving franchise expansion to serve an 18-unit housing development being developed by Swanze Township Housing Associates, L.P.).

2010, West Swanzezy filed its rate schedules along with supporting documentation and testimony for rates effective October 1, 2010. West Swanzezy sought to increase its annual revenue requirement by \$10,126, or 17.13% and stated that it has experienced a net loss for a number of years and that, during the test year ending December 31, 2009, its actual net income was a loss of \$5,898, which it attributed to reduced sales volume and an increase in local property taxes.

On October 7, 2010, the Commission issued Order No. 25,152 and suspended the proposed tariff schedules pursuant to RSA 378:6 pending its investigation. The Commission also granted West Swanzezy's waiver request, scheduled a prehearing conference and technical session for November 19, 2010.

The prehearing conference was held as scheduled. The Commission received no intervention requests. West Swanzezy and Staff met in a technical session and developed a proposed procedural schedule. Staff filed the proposed procedural schedule and, by secretarial letter dated November 29, 2010, the Commission approved the procedural schedule.

West Swanzezy and Staff conducted discovery and met in a technical session pursuant to the procedural schedule. On December 29, 2010, Staff and West Swanzezy filed a settlement agreement. On January 4, 2011, the Commission held a hearing on the merits at which Staff and West Swanzezy presented evidence and testimony in support of the settlement agreement.

West Swanzezy submitted its rate case expense request and supporting documentation to Staff on January 18, 2011 and, on February 14, 2011, Staff filed a letter recommending that the Commission authorize West Swanzezy to recover \$8,128.80 in rate case expenses. West Swanzezy originally requested the recovery of rate case expenses to occur over one calendar year and be collected from its 75 water customers and 5 fire protection customers. Staff suggested to West Swanzezy that the one year time-period could be onerous for customers in light of the change in

rate design and resulting increase in the fixed customer charge. Staff also pointed out that some fire protection customers are also residential water customers and thus would be subject to paying twice for rate case expenses. Staff and West Swanzey agreed to extend the recovery period to two years and to revise the customer count to 76 customers for purposes of rate case expense recovery. Staff and West Swanzey agreed to a recovery surcharge of \$13.37 per quarter per customer for two years until the amount of \$8,128.80 is collected.

On March 10, 2011, Staff filed a revised recommendation concerning recovery of rate case expenses. Staff stated that West Swanzey had recently received a bill from the court stenographer for services related to the proceeding and wished to add that amount to its rate case expense recovery. Staff proposed that \$8,366.95 be recovered through a \$13.76 surcharge per customer per quarter for two years.

II. TERMS OF AGREEMENT

Staff and West Swanzey presented the following terms of agreement.

A. Revenue Requirement

Staff and West Swanzey recommend that the Commission approve an annual revenue requirement of \$67,015. When compared to the 2009 test year revenues, this represents an increase of \$8,009, or 13.57%. This revenue requirement was the product of adjustments identified in schedules to the settlement agreement, in particular, adjustments made to reflect West Swanzey's updated affiliate agreement, management fees, and rent. Hearing Transcript of January 4, 2011 (Tr. 1/4/11) at 11 lines 19-21. Staff and West Swanzey agree to a rate base of \$197,490 and a rate of return on that rate base of 5.27%. Staff testified that the rate was derived from the two bank loans the company has outstanding. Tr. 1/4/11 at 12 lines 20-24. Staff and

West Swanzey agree to a 9.75% return on equity. Staff testified that the assets in rate base were used and useful in the provision of utility service. Tr. 1/4/11 at 11 lines 8-9.

B. Effect on Customer Rates

Staff and West Swanzey recommend the Commission approve changes to the company's present general metered rate design to increase the customer charge more than the volumetric rate in order that the fixed customer charge recover a greater proportion of the company's fixed costs. Since 1988, West Swanzey's rates for general metered service included a \$6.82 quarterly customer charge for a 5/8-inch meter as well as a consumption charge of \$0.566 per 100 gallons. Staff and West Swanzey recommend increasing the rates to an \$18.00 customer charge and a volumetric rate of \$0.600 per 100 gallons. Since 2003, West Swanzey has offered fire protection service ranging from 1-inch to 8-inches, however, it has only five customers: four fire protection customers taking 8-inch service; and one customer taking 6-inch service. Current rates are \$300 per quarter for 6-inch service and \$500 for 8-inch service. Staff and West Swanzey recommend no change in rate design for fire protection service and recommend increasing rates by 13.57% across the fire protection rate groups, which would result in the 6-inch customer paying \$340.72 per quarter and the 8-inch customers paying \$567.87. Staff and West Swanzey propose an effective date of January 1, 2011.

C. Step Adjustment

Staff and West Swanzey recommend that the Commission allow West Swanzey to file for a step increase to its rates for an estimated \$33,000 in capital improvements planned for well #2. At hearing, Staff and West Swanzey agreed to a deadline of no later than December 31, 2011 for that filing. Tr. 1/4/11 at 21 lines 4 - 15. The estimated future revenue impact is \$4,685 per year

which is an additional 6.99% increase over 2009 test year revenues. West Swanzey expects to complete the project in 2011.

D. Affiliate Contracts

West Swanzey agreed to file an affiliate contract within 30 days of the date of the settlement agreement. West Swanzey filed the required agreements on January 5, 2011 and thus this provision has already been met.

E. Bill Form

West Swanzey agreed to correct deficiencies in its bill form within 30 days of the date of the settlement agreement. At hearing, Staff and West Swanzey proffered Exhibit 3 as the bill form responsive to this provision. Staff testified that Exhibit 3 satisfied the terms of the agreement. Tr. 1/4/11 at 19 lines 9 – 18. Thus, this provision is completed.

F. Rate Case Expenses

Staff and West Swanzey recommend the Commission allow West Swanzey to seek recovery of its rate case expenses associated with this proceeding, pursuant to RSA 365:38-a.

III. COMMISSION ANALYSIS

Pursuant to RSA 541-A:31,V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. The Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise “as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.” *Granite State Electric Co.*, Order No. 23,966, 87 NH PUC 302, 306 (2002). Notwithstanding a settlement among the parties, we must still independently determine whether the settlement results comport with applicable standards.

N.H. Code Admin. R. Puc 203.22 (b) requires us to determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest. RSA 378:7 authorizes us to fix rates pursuant to an order after a hearing upon determining that the rates, fares, and charges are just and reasonable. In determining the justness and reasonableness of rates, we balance the customers' 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). Additionally, in circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. 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).

Staff and West Swanzey recommend a revenue requirement of \$67,015. This revenue requirement is 13.57% higher than West Swanzey's adjusted test year water revenues. To reach the proposed revenue requirement, Staff and West Swanzey propose a number of adjustments to rate base, expenses, and revenues. Some adjustments were to reflect a 5-quarter average of the test year. Other adjustments recognized changes in water sales, power expense, insurance expense, and management expenses. Staff and West Swanzey agree to a rate of return of 5.27% and this is based on a return on equity of 9.75% and an average cost of debt of 4.31%. It is expected that West Swanzey will earn a positive rate of return with its new revenue requirement. Having reviewed the evidence and testimony, we agree with Staff and West Swanzey that the proposed revenue requirement is reasonable and we will approve it.

With respect to the step adjustment, Staff and West Swanzezy request that West Swanzezy be allowed to request recovery of approximately \$33,000 in capital improvements planned for its well #2, upon completion of the project. We have previously employed step adjustments to rates as a means of ensuring that a regulated utility retains its ability to earn a reasonable rate of return after implementing large capital projects that increase the utility's rate base after a test year. *See, Eastman Sewer Company, Inc.*, Order No. 24,989 (July 24, 2009) at 7-8. The step adjustment avoids placing a utility in an earnings deficiency immediately after a rate case in which the revenue requirement was based on a historical test year. *See id.* Here, West Swanzezy plans to rehabilitate well #2 in an effort to secure additional water supply and expects to complete the project in 2011. The work involves cleaning out the well and either repairing or replacing the well pump. We consider this work to represent prudent management and good utility practice. The anticipated cost of the work is approximately 8% of West Swanzezy's total plant in service, which is large enough to adversely affect West Swanzezy's ability to earn its authorized rate of return. Thus, we find it reasonable to permit West Swanzezy to apply for a step adjustment for this project no later than December 31, 2011. We will review the prudence of the costs and the reasonableness of any rate impact attributed to this proposed step adjustment when West Swanzezy makes its filing.

With respect to customer rates and the effective date, Staff and West Swanzezy recommend the fixed charge be increased. For a customer taking 5/8-inch service, the fixed rate would increase from \$6.82 to \$18.00; an increase of 163.93%. The volumetric rate would increase from \$0.566 to \$0.600 per 100 gallons; an increase of 6.08%. West Swanzezy bills on a quarterly basis and Staff and West Swanzezy recommend an effective date of January 1, 2011. Staff testified at hearing that the benefit of changing the rate design to increase the fixed charge

more than the volumetric charge is that the higher volume users will no longer be paying a disproportionately higher share of the fixed costs needed to maintain the system. Tr. 1/4/11 at 14 lines 21-24. Staff went on to testify that since distribution of water is highly capital-intensive, the variable costs of water are not as great as those with the natural gas or electricity utilities. Therefore, raising the fixed charge is a more equitable way to recover the fixed costs of maintaining the system. Tr. 1/4/11 at 15 lines 1-18. As to the remainder of the service rates charged by West Swanzey, we note that the private fire protection rate is being raised 13.57%, the same percentage as the overall revenue increase.

Having reviewed the evidence and testimony, we find that the proposed rates are just and reasonable. The fixed rate has not been adjusted since 1988 and, according to Staff and West Swanzey, no longer reflects costs. When raising the fixed charge and volumetric rate of a water utility by the same percentage as the overall revenue requirement causes the rate structure to become less cost-based, adjustments are warranted and we agree an adjustment is appropriate here. Volumetric rates serve a public policy of encouraging water conservation; however, that policy must also be balanced against traditional cost-of-service rate regulation. The fixed and volumetric rates proposed by Staff and West Swanzey will bring the rates more in line with recovery of actual costs. Thus, we find the proposed rates, as illustrated on Schedule 4 of the settlement agreement, to be just and reasonable.

Lastly, we address the issue of rate case expenses and the proposed surcharge. The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of business appropriate for recovery through rates. *See, Lakes Region Water Company, Inc.*, Order No. 24,708, 91 N.H. PUC 586, 587 (2006). As stated above, West Swanzey seeks to recover \$8,366.95 in rate case expenses from customers over a period of two years through a surcharge

of \$13.76 per customer, per quarter. Staff and West Swanzey agree the surcharge should be billed to 76 customers. Staff stated that it fully reviewed West Swanzey's supporting documentation of rate case expenses and concluded the \$8,366.95 in expenses was reasonable. We agree. We also find that recovery of these rate cases expenses through a surcharge of \$13.76 per customer, per quarter will not be burdensome to customers. We find the proposed surcharge to be just and reasonable and we will approve it.

With respect to West Swanzey's tariff on file with the Commission, we note that the tariff does not comply with N.H. Admin. R. PART Puc 1603, in particular regarding the proper header. We thus direct West Swanzey to file its tariff in compliance with the format specified in the Commission's administrative rules and we direct Staff to assist West Swanzey with any questions the company has regarding the proper tariff form.

Based upon the foregoing, it is hereby

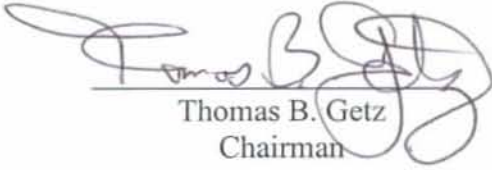
ORDERED, that the terms of the settlement agreement are hereby adopted and APPROVED as discussed herein; and it is

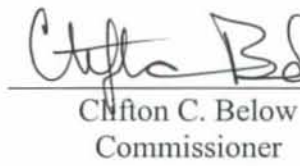
FURTHER ORDERED, that West Swanzey Water Company is authorized to collect from customers permanent rates, on a bills rendered basis as of January 1, 2011, as discussed herein; and it is

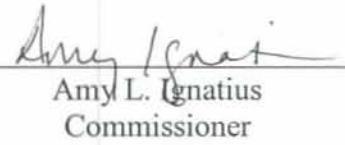
FURTHER ORDERED, that West Swanzey Water Company is authorized to recover rate case expenses totaling \$8,366.95 from seventy-six customers as discussed herein through a surcharge in the amount of \$13.76 per customer per quarter for two years; and it is

FURTHER ORDERED, that West Swanzey Water Company shall file a compliance tariff within thirty days of the date of this order.

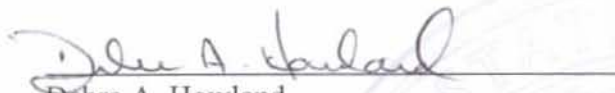
By order of the Public Utilities Commission of New Hampshire this fifteenth day of
March, 2011.

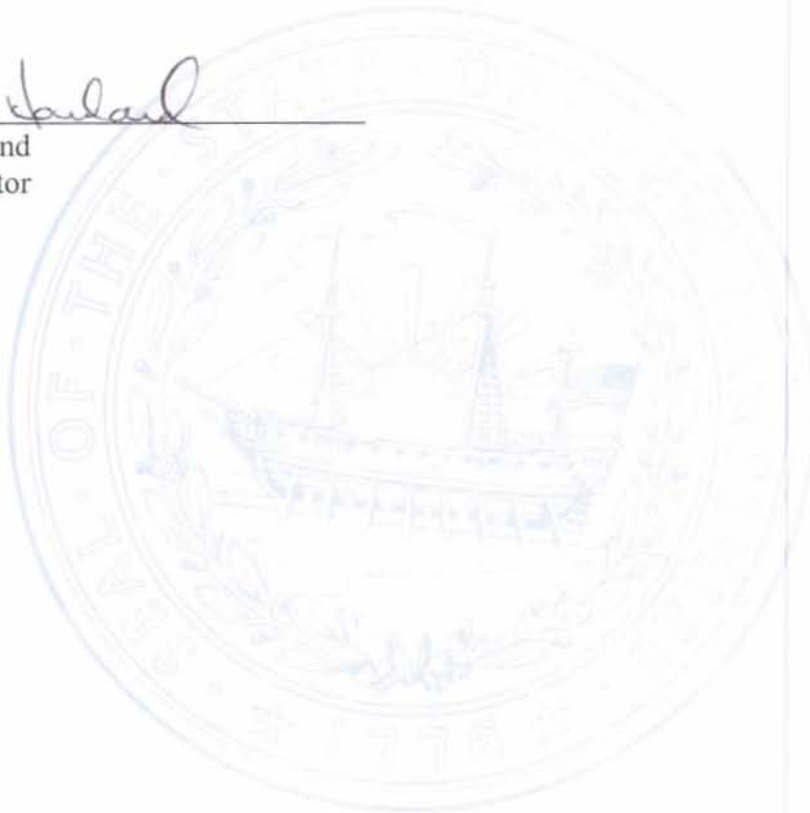

Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
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Attested by:


Debra A. Howland
Executive Director



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03/15/11 Order No. 25,203 issued and forwarded to all parties.
Copies given to PUC Staff.

Docket #: 10-159 Printed: March 15, 2011

FILING INSTRUCTIONS: **PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**
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