

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

HAMPSTEAD AREA WATER COMPANY, INC.

DW 18-138

**Drinking and Groundwater Trust Fund Financing and Step Increase
SETTLEMENT AGREEMENT**

This Settlement Agreement concerning the Drinking and Groundwater Trust Fund Financing and Step Increase (Settlement Agreement) is entered this 4TH day of FEBRUARY, 2019, by and among the Staff of the Public Utilities Commission (Staff), the Office of the Consumer Advocate (OCA), and Hampstead Area Water Company, Inc. (HAWC or the Company) (collectively the Settling Parties), and is intended to resolve the outstanding issues in the above-referenced docket. The Settling Parties agree to this joint submission to the Commission as resolution of the issues specified herein only. This Settlement Agreement shall not be deemed an admission by the Settling Parties that any allegation or contention in this proceeding, other than those specifically agreed to herein, is true and valid. This Settlement Agreement shall not be deemed to foreclose Staff, the OCA, or HAWC from taking any position in any future proceedings. The Settling Parties agree that this settlement and attachments should be admitted as a full exhibit and be given whatever weight the Commission deems appropriate.

I. INTRODUCTION AND PROCEDURAL HISTORY

HAWC is a regulated public utility as defined by RSA 362:2 and 362:4 and provides water service to approximately 3,660 customers in the communities of Atkinson, Chester, Danville, East Kingston, Fremont, Hampstead, Kingston, Newton, Nottingham, Plaistow, Salem, Sandown, and Strafford.

On September 4, 2018, HAWC petitioned the Commission for authority to incur long-term debt from the Drinking Water and Groundwater Trust Fund (DWGTF), which is administered by the New Hampshire Department of Environmental Services (DES). In connection with the proposed financing, HAWC also requested authority to increase its rates via a step adjustment to pay the debt service on the financing and to earn a reasonable rate of return on its invested capital. The Company sought expedited approval in order to qualify for low-interest financing which is available for a limited time period.

On September 24, 2018, the Commission issued an Order of Notice, scheduling a prehearing conference, held on October 15, followed by a technical session. The OCA filed its letter of participation on September 25. The Settling Parties attended the October 15 technical session and agreed to a proposed procedural schedule, later approved by the Commission, which included a follow-up technical session December 5. At that technical session, the Settling Parties met and agreed to the resulting terms of this Settlement Agreement.

II. DWGTF FINANCING

A. Description and Purpose

The proposed financing would fund part of the construction of the Atkinson Water Storage Tank (Tank Project), a one million gallon tank, to be located in Atkinson and to become part of HAWC's Atkinson and Hampstead Core System. The construction of the tank is also part of the much larger Southern New Hampshire Regional Water Project (Southern NH Project), supported by the DES, to "transmit water supply from Manchester Water Works to meet domestic water demands in the towns of Windham, Salem, Atkinson, Hampstead and Plaistow." *See* Attachment A at 1 (Engineering report providing overview of Southern NH Project). The Tank Project will be providing safe, reliable, and adequate drinking water to

Southern New Hampshire, including the Town of Plaistow. The preliminary design of this construction is contained in a contract between HAWC and DN Tanks, filed as Exhibit 1 of the Company's Petition, filed on September 4, 2018.

The Tank Project, includes numerous costs: engineering; legal; tank construction; and appurtenant infrastructure. Due to a change in the federal tax law concerning Contributions in Aid of Construction (CIAC), the federal tax impact is also included in the Tank Project cost. In sum, the total estimated cost of the Tank Project is \$2,150,000. *See* Attachment B (HAWC Letter to DWGTF Administrator requesting DWGTF funding). It is anticipated that construction of the tank will commence during spring 2019 and will be substantially completed by fall 2019.

On November 5, 2018, the DES's Drinking Water and Groundwater Advisory Commission voted to authorize funding for the Tank Project. The DWGTF authorized funding consists of a grant up to \$1,130,000, relative to that portion of the project which will benefit Plaistow; and a loan of up to \$1,020,000, relative to that portion of the project which will benefit HAWC's customers, and subject to Commission approval. *See* Attachment C (Letter to HAWC informing approval of funding by the Drinking Water and Groundwater Advisory Commission). In the event the New Hampshire Public Utilities Commission approves this Settlement Agreement, the proposed grant and loan will be submitted to the Governor and Executive Council for final approval.

B. Loan Provisions

To date, DES has not provided loan documentation setting forth the terms and conditions of the financing. Staff, however, verbally confirmed with DES employee Rick Skarinka on November 30, 2018, that the terms of the DWGTF loan would be almost identical to that of the

terms of a State Revolving Fund Loan. As such, the Settling Parties believe the financing terms will not deviate substantially from the terms listed below.

- 1) HAWC will borrow up to \$1,020,000.
- 2) The DWGTF loan will mature 30 years from the date of closing.
- 3) The interest rate will be 3.38 percent per annum.
- 4) During the Tank Project's construction, interest will accrue on the borrowed funds at the rate of 1.00 percent per annum. Upon substantial completion of the Tank Project, interest on the borrowed funds will begin to accrue at the approved interest rate of the financing.
- 5) The first interest payment on the borrowed funds will be due six (6) months following substantial completion of the Tank Project. This will be followed by six (6) monthly interest-only payments.
- 6) Monthly principal and interest payments will commence one year following substantial completion of the Tank Project.

C. Anticipated Increased Revenue Requirement, Rate Impact, and Effect on Capitalization

At Staff's request, the Company provided responses regarding the estimated increase in revenue requirement, including attachments, based upon 100 percent use of the funds at the currently anticipated financing terms, as summarized in Attachment D. The Company estimates that the increase in its revenue requirement resulting from the tank project will amount to

\$97,003, or 4.94 percent. *Id.* and Attachment E.¹ The Company also estimates that this would increase the customer consumption charge, from \$6.11 per one hundred cubic feet (ccf) of water to \$6.51 per ccf. *Id.* Lastly, the Company estimates that their debt capitalization will increase from 61.75 percent to 66.88 percent, and its equity capitalization will decrease from 38.25 percent to 33.12 percent, resulting in an approximate 5 percent change in each. Attachment F. The Settling Parties note, however, that the Company's sole shareholder has demonstrated a prior willingness to make equity infusions into the Company, when necessary.

III. LEGAL STANDARD FOR FINANCING

RSA 369:1 states that a utility “may, with the approval of the commission but not otherwise, issue and sell ... notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes.” The Commission will conduct “hearing or investigation as it may deem proper,” then authorize the financing “if in its judgment the issue of such securities upon the terms proposed is consistent with the public good.” RSA 369:4. Analysis of the public good involves looking beyond the actual terms of the proposed financing to the use of the funds and the effect on rates to insure the public good is protected. *Appeal of Easton*, 125 N.H. 205, 211 (1984). “[C]ertain financing related circumstances are routine, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing.” *Pennichuck East Utility, Inc.*, Order No. 26,189 at 5 (November 6, 2018). “A routine financing request is one that

¹ While Attachments D and E designate these figures in relation to a “step increase” amount, the Settling Parties agree these figures are merely illustrative of the anticipated revenue requirement and rate impact, and that a step increase is not sought by the Company at this time. *See* Part IV, Section 2 of this Settlement Agreement.

will have no discernable impact on rates or deleterious effect on capitalization, and in which the funds are to enable appropriate investments in the ordinary course of utility operations.” *West Swanzey Water Company, Inc.*, Order No. 26,133 at 3 (May 10, 2018). If it is determined that the request is routine, the “Commission will use the more limited examination of whether the use of the financing proceeds is in the public good without further review of possible alternative uses of the funds. *Id.*

IV. TERMS OF SETTLEMENT AGREEMENT

1. The Settling Parties agree that due to the necessity of the Tank Project as part of the larger Southern NH Project, and that the financing through DES has already been authorized by the Drinking Water and Groundwater Advisory Commission, it is a necessary investment in the ordinary course of HAWC’s operation, and thus it is a routine financing. That is further evidenced by the estimated increase in revenue requirement. The proposed financing’s estimated rate increase of 4.94 percent, while not *de minimus*, is not discernable, nor will the proposed financing have a deleterious effect on capitalization. Thus, the Settling Parties agree and recommend that the Commission find that this is a routine financing and, as such, use a more limited examination of whether the use of financing proceeds is within the public good without review of possible alternative uses of the funds.

2. The Settling Parties agree and recommend that the Commission approve this financing at the anticipated rate, terms, and conditions, as currently understood, and find that these are reasonable and within the public good. The Settling Parties agree that the capital project resulting from this financing will enable HAWC to provide safe, adequate, and reliable water service to customers serviced by the Hampstead and Atkinson core system, and additional customers in Plaistow. The Settling Parties further agree that this financing is reasonable and in

the public good as it will be a crucial part of the Southern NH Project, of which this particular project has already received Drinking Water and Groundwater Advisory Commission authorization.

3. The Settling Parties agree that HAWC will submit the final terms of the financing to the Commission as soon as they are available. If the final terms and conditions of the financing vary materially from those described above, such new or modified terms and conditions shall be subject to Commission approval.

4. The Settling Parties agree that HAWC will withdraw its request for a step increase as contained in its September 4, 2018, Petition for Approval of Drinking and Groundwater Trust Fund Financing and Step Increase. In consideration for that withdrawal, the Settling Parties agree that nothing in this Settlement Agreement shall prevent HAWC from filing a full rate proceeding in 2019. In further consideration for that withdrawal, the Settling Parties also agree that such a rate case may be based on a split test year for a twelve (12) month period ending in 2019. In such case, the Settling Parties agree that the Tank Project must be in service as of the date of the final resolution of such rate proceeding. The Settling Parties agree that the Commission is not making a prudence determination and is not required to determine if the cost of the Tank Project should be recovered from ratepayers at this time. The Settling Parties further note that HAWC is permitted to request recovery of an investment, and nothing in this Settlement Agreement precludes any party from taking an opposing position with regard to such a request.

5. The Settling Parties further stipulate that this Settlement Agreement represents the recommendation of all the parties and Staff to this matter. Therefore, the Settling Parties respectfully request the Commission approve this Settlement Agreement, enabling HAWC to

secure the funds under the DWGTF loan program and timely commence construction of the Tank Project.

V. MISCELLANEOUS

A. This Settlement Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept the Settlement Agreement in its entirety, without change or condition, or if the Commission makes any findings that go beyond the scope of this Settlement Agreement, and the Settling Parties are unable to agree with these changes, conditions or findings, the Settlement Agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding and shall not be used for any other purpose.

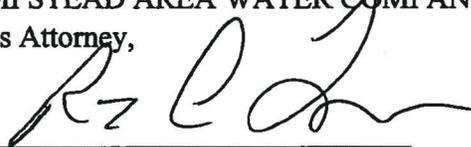
B. The Settling Parties agree that the Commission's acceptance of the Settlement Agreement does not constitute continuing approval of, or precedent for, any particular issue in this proceeding other than those specified herein.

C. This Settlement Agreement may be executed in multiple counterparts, which together shall constitute one settlement.

IN WITNESS WHEREOF, the signatories below have executed this Settlement Agreement,
each being fully authorized to do so, as of the day indicated below.

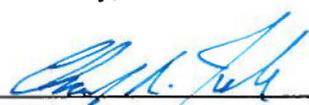
HAMPSTEAD AREA WATER COMPANY, INC.
By its Attorney,

Date: 1-31, 2019

By: 
Robert C. Levine, Esq.

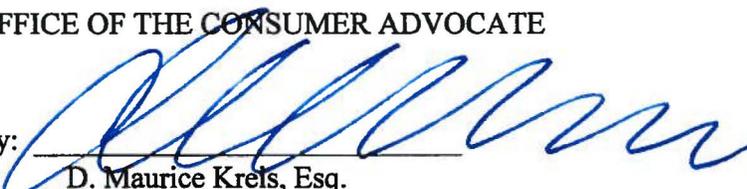
STAFF OF THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
By its Attorney,

Date: 2-4, 2019

By: 
Christopher R. Tuomala, Esq.
Staff Attorney

OFFICE OF THE CONSUMER ADVOCATE

Date: 2/4, 2019

By: 
D. Maurice Krels, Esq.
Consumer Advocate