

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 07-131

ATKINSON AREA WASTEWATER RECYCLING, INC.

**Petition for Approval of Acquisition of Assets, Financing
and
Establishment of Permanent Rates**

Order Approving Stipulation Agreement

ORDER NO. 24,899

September 25, 2008

APPEARANCES: Robert C. Levine, Esq. on behalf of Atkinson Area Waste Water Recycling, Inc., Marcia A.B. Thunberg, Esq. of behalf of Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On December 17, 2007, Atkinson Area Waste Water Recycling, Inc. (AAWW) filed a Notice of Intent to file rate schedules, along with a request to waive certain filing requirements. On February 20, 2008, AAWW filed its Petition for Approval of Acquisition of Assets, Financing, and Establishment of Rates. In support of its petition, AAWW filed financial schedules and pre-filed testimony. AAWW was originally granted a franchise for the requested area in Docket No. DE 90-214, by Order No. 20,298, *Atkinson Area Waste Water Recycling, Inc.*, 76 N.H. P.U.C. 681 (1991). AAWW, however, did not exercise its franchise authority within two years of the Commission's order and thus renewed its franchise request in the instant filing.

The financing AAWW seeks is for the purchase of the existing sewer facilities, which AAWW currently does not own. The facilities are owned by Atkinson Farm, Inc. (AFI), the parent company of AAWW and of Atkinson Concessions, Inc. d/b/a Atkinson Resort & Country

Club, which is AAWW's sole commercial customer. AAWW plans to serve this commercial customer as well as a proposed development known as Atkinson Heights, an age-restricted, 55 and over, residential condominium development. The Town of Atkinson has approved construction of 288 condominiums, consisting of nine buildings with 32 units each. According to a third-party contract filed with the petition, Lewis Builders Development, Inc. (LBDI) and AFI are the developers of Atkinson Heights. AAWW anticipates the initial customer base will comprise four condominium buildings with 128 residential customers, plus the one commercial customer.

On February 26, 2008, AAWW filed a request for waiver of NH Code Admin. Rules Puc 1604.05 regarding the 30 day filing time limit and, on March 5, 2008, filed a request for waiver of Puc 1604.05 regarding a 60 day filing time limit.

On March 14, 2008, the Commission issued Order No. 24,833, suspending AAWW's proposed permanent rate and scheduling a prehearing conference for April 22, 2008. The Commission also granted AAWW's waiver requests.

On April 21, 2008, AAWW filed an amendment to its petition to increase its proposed residential rates from \$60 to \$108 annually and reduce the consumption rate from \$13.37 per hundred cubic feet to \$12.70. AAWW also requested to change the proposed consumption rate for commercial customers from \$13.37 to \$12.70 but kept the proposed base rate at \$3,000 annually. On April 22, 2008, the Commission held a prehearing conference and Staff and the parties met in a technical session for the purpose of setting a procedural schedule. Staff and the parties conducted discovery according to the schedule.

On July 9, 2008, AAWW filed with the Commission, a revised NHPUC No. 1 sewer tariff, filed as revised Exhibit No. 13 in the current docket. Staff and parties entered into a stipulation agreement and filed the agreement on July 18, 2008. The Commission held a duly

noticed hearing on July 29, 2008, at which Staff and AAWW presented testimony and other evidence in support of the agreement.

II. STIPULATION AGREEMENT

The terms of the agreement are as follows:

A. Franchise — Staff and AAWW recommend the Commission reinstate the franchise rights previously granted to AAWW in Order No. 20,298 (November 12, 1991) in Docket No. DE 90-214. AAWW testified that it had received all required permits from the Department of Environmental Services and that the Town of Atkinson had approved the development. Hearing Transcript of July 29, 2008 (7/29/08 Tr.) at 11-12 lines 23-4. In Order No. 20,298, the Commission approved a franchise for approximately 325 housing units, however, AAWW's present proposal involves only 288 residential units plus one commercial customer that is already being served by AAWW. At hearing, AAWW testified that the Town of Atkinson, although having approved all 288 residential units, has restricted construction to an initial four buildings and 128 residential units. 7/29/08 Tr. at 22 lines 12-17.

B. Revenue Requirement — Staff and AAWW agree to and recommend the Commission approve an overall revenue requirement of \$126,343. At hearing, Staff and AAWW testified that this revenue requirement was established based upon the rate base of \$144,598, operating income of \$10,705, operating expenses, income taxes, as adjusted for the test year 2007. Staff and AAWW agreed upon a rate of return of 7.40%. 7/29/08 Tr. at 12 lines 14-24.

C. Customer Rates and Tariff — Based on a customer count consisting of one existing commercial customer and 128 residential units, Staff and AAWW recommend a consolidated base rate of \$108.00 per year for residential customers and a base charge of \$3,000 for commercial customers. Staff and AAWW propose that all customers be charged a

consumption rate of \$11.91 per 100 cubic feet. AAWW testified that the difference between the residential rate and the commercial rate arose from the fact that residential service is based on a five-eighths inch meter and AAWW's commercial customer has a 2-inch meter. 7/29/08 Tr. at 15 lines 11-16. This meter difference affects the volume of wastewater.

AAWW testified that the rates recommended by Staff and AAWW are slightly lower than what AAWW originally proposed because Staff and AAWW agreed to a reduction in rate base and in certain operating expenses. 7/29/08 Tr. at 15 lines 2-7. AAWW also testified that AAWW will charge hook up fees, as identified in its tariff and that it has not yet charged any rates to customers. Id. at 16 lines 8-13. In Order No. 20,298, the Commission prohibited AAWW from charging for service until rates were approved by the Commission.

According to agreement, the average annual revenue per residential customer is expected to be \$617.00. Exh. 7 at 18. Lastly, Staff and AAWW recommend the Commission approve AAWW's tariff, as revised by AAWW on July 9, 2008, to reflect the change in the proposed rates.

D. Contribution of Existing Plant — Staff and AAWW agree that AFI will contribute the existing physical plant to AAWW as a contribution in aid of construction (CIAC). Staff testified that the value of this plant was \$587,147. 7/29/08 Tr. at 13 lines 14-17. This treatment is consistent with Order No. 20,298, which adopted Staff and the company's proposal to treat the original plant as CIAC. Staff testified that additional, recent plant in the amount of \$625,399 will be transferred from LBDI to AAWW at a purchase price of \$129,000. Id. at lines 20-24. This purchase price was determined by Staff and AAWW by calculating \$1,000.00 for each of the anticipated 128 units plus the existing commercial customer. The remaining amount of the cost of the system will be contributed by AFI and LBDI to AAWW as CIAC.

E. Contracts — Staff and AAWW agree that the Contract to Construct, Purchase Sewage Utility Assets & Provide Domestic Sewer Service, among AFI, LBDI, and AAWW submitted for approval is just and reasonable. See, Exh. 1 at 18. Staff and AAWW state that LBDI and Hampstead Area Water Company, Inc. (HAWC) will be providing management, services, and facilities to AAWW for the operation of the system. Staff and AAWW agree that the management contract pertaining to these services is just and reasonable pursuant to RSA 366. See, Exh. 1 at 40. At hearing, AAWW testified that these contracts were necessary because AAWW presently does not own the sewer assets and has no employees; it relies on these contracts for labor and other services. For these reasons, Staff and AAWW recommend the Commission approve these contracts.

F. Financing — Staff and AAWW agree that the promissory notes in the amounts of \$129,000 and \$34,000 are just and reasonable and recommend the Commission approve them pursuant to RSA 369. Staff testified that the note for \$34,000 was not part of AAWW's original request and that Staff learned during discovery that this note had not received Commission approval. 7/29/08 Tr. at 18 lines 10-18. According to the agreement, the interest rate is recommended to be two and one-quarter percent plus the Prime Rate as published in the Wall Street Journal on the last business day of the quarter prior to PUC approval and adjusted on that anniversary date every three years thereafter. Exh. 7 at 20. Staff testified further that the method of determining the interest rate was derived from recent loans the Commission approved for HAWC. 7/29/08 Tr. at 18 lines 21-23.

G. Rate Case Expenditure — AAWW agrees to submit documentation of its rate case expenditures and propose a rate case expense surcharge to Staff for its review and recommendations. Staff testified that once it receives AAWW's rate case expense

documentation, it will audit the expenses and submit a recommendation to the Commission.

7/29/08 Tr. at 21 lines 10-18.

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.” *Concord Electric Co.*, 87 NH PUC 595, 605 (2002); *Granite State Electric Co.*, 87 NH PUC 302, 306 (2002). Notwithstanding a settlement among the parties, the Commission must still independently determine whether the settlement results comport with applicable standards.

N.H. Code Admin. Rules 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 just 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.

RSA 374:22, I requires Commission approval of utility franchise transfers. We grant requests for franchise authority and allow an entity to engage in the business of a public utility when we find, after due hearing, that the exercise of the right, privilege, or franchise is for the

public good. RSA 374:26; see also RSA 374:30 (same, as to franchise and asset transfers). In determining public good, we assess the managerial, technical, and financial expertise of the petitioner. *Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

With respect to AAWW's request for reinstatement of its franchise rights, we acknowledge that in Order No. 20,298, the Commission found that AAWW possessed the requisite managerial, technical, and financial expertise to operate a utility. Having reviewed the filings and evidence presented at hearing, we find that AAWW continues to possess the requisite managerial, technical, and financial expertise to provide sewer service in the requested franchise area. AAWW has in place the necessary contracts to operate the sewer facilities. AAWW has entered into agreements to purchase the plant assets and to obtain easement rights to the facilities. AAWW has also arranged the necessary financing to purchase the assets. We find these contracts are for the public good and we will approve them. Additionally, we will approve AAWW's franchise request.

We now turn to the issue of rate base and revenue requirement. It is well established that a utility is entitled to a reasonable return on its invested assets. The purpose of establishing an allowed return is not to guarantee that the utility will actually earn it, but to provide the utility with a reasonable opportunity to do so and thereby to establish rates that do not result in an unconstitutional taking of the utility's property without just compensation. *See e.g., Public Service Company of New Hampshire*, 90 NH PUC 230, 246 (2005) citing *Appeal of Public Service Co. of N.H.*, 130 N.H. 748, 751 (1988). As stated earlier, this entitlement is balanced against a customer's right to just and reasonable rates. In situations where the utility's assets are purchased from a related party, the Commission seeks to ensure that costs are not inflated and that customers pay a return on assets only once. The Commission addressed this issue in Order No. 24,362 in Docket No. DW 02-128. The Commission ordered that utility assets constructed

by LBDI and then transferred to HAWC should be booked at LBDI's costs, including labor burden, and general and administrative overhead costs, but that any profit allowed to LBDI over and above such costs appear on HAWC's books as CIAC. *Hampstead Area Water Company, Inc.*, 89 NH PUC 501, 503-504 (2004). Consistent with this method, Staff and AAWW have removed from the calculation of rate base, plant associated with recent construction as well as plant associated with the original construction of the facilities. Staff and AAWW recommend the new plant, valued at \$625,399, be transferred from LBDI to AAWW at a purchase price of \$129,000, with the remaining \$496,399 treated as CIAC. As stated earlier, Staff and AAWW determined the purchase price by valuing each service connection at \$1,000. As to the original plant, Staff and AAWW recommend \$587,147 be treated as CIAC, consistent with Order No. 20,298. Accordingly, we will approve the treatment of \$1,083,546 in plant as CIAC and this plant will not be included in customers' rates.

With respect to the proposed financing, pursuant to the provisions of RSA 369:1, public utilities engaged in business in New Hampshire may issue evidences of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." The public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates to ensure the public good is protected. See *Appeal of Easton*, 125 N.H. 205 (1984). AAWW intends to use the proceeds of the financing to purchase the sewer system assets. AAWW's method of establishing the purchase price is reasonable and consistent with previous approved financings involving its affiliate HAWC. We find that AAWW's proposed purchase of the system assets is prudent and in the public good and we approve that acquisition.

Having found that the intended use of the proposed financing for the purchase of the sewer system assets is both prudent and in the public good, we turn our attention to the proposed

terms of the financing and the impact on customer rates. Those terms require that AAWW pay LBDI the sum of \$129,000 over a twenty (20) year term in two hundred forty (240) monthly installments of principal and interest. The initial interest rate will be established at 2.25% above the prime rate published in the Wall Street Journal on the last business day of the calendar quarter preceding our approval of this financing. We find that the terms of the financing are consistent with other financings by AAWW's affiliate, HAWC, that we recently approved and that these terms will not have an adverse impact on future customer rates. Based on our review of the record, we find the proposed financing for the purchase of the sewer system assets is consistent with the public good and we approve the financing.

With respect to the revenue requirement agreed to, we note that service to Atkinson Heights is prospective. AAWW testified that construction is expected to commence in the spring of 2009. 7/29/08 Tr. at 23 lines 21-23. None of the residential units have been presold. 7/29/08 Tr. at 24 line 8. Thus, Staff and AAWW's test year data is based on 2006 actual commercial usage and estimated residential usage. Exh. 7 at 8 - 18. We note that the Commission traditionally uses a historical test year method of determining a utility's revenue requirement. As stated in *Re EnergyNorth Natural Gas, Inc.*, Report and Order No. 20,776 (March 1, 1993) "this methodology (twelve month historical test year) has resulted in just and reasonable rates..." *Id.* at 10-11. However, this method of ratemaking was, and is, neither "statutorily nor constitutionally mandated" and that at times it may be necessary to deviate from this method in order to fulfill the statutory mandate to ensure just and reasonable rates. *Id.* We consider a utility's first establishment of rates a time when it is necessary to deviate from the historical test year method.

Notwithstanding the difficulty posed by the lack of historical information to draw upon, Staff and AAWW have developed a reasonable basis for establishing a revenue requirement. For

instance, the value of the plant is known and thus local and state property tax expenses can be determined with reasonable certainty. Operational and maintenance expenses for the addition of 128 customers can be reasonably discerned from the actual expenses associated with service provided to AAWW's large, commercial customer. Also, AAWW has contracted with LBDI and HAWC to provide, among other things, accounting, legal, maintenance, payroll, and billing services. Exh. 1 at 40-45. LBDI and HAWC have been in business for decades and thus it can be expected that their estimates of cost are reasonably accurate. Having reviewed the evidence and testimony, we find that the proposed revenue requirement is reasonable and we will approve it.

We next turn to the issue of rate design. In Order No. 20,298, AAWW was not authorized to charge rates until they were approved by this Commission. The instant filing is AAWW's first rate filing since that order. As with the revenue requirement, the proposed rates, in particular the residential rates, are not based on historical test year data. Since, however, we have found that Staff and AAWW's proposed revenue requirement is reasonable, our analysis concerns whether the allocation of the revenue requirement among the customers is just and reasonable. AAWW has based the \$108 residential and \$3,000 commercial flat base rates and the \$11.91 per 100 cubic foot volumetric rates on the 2006 actual data it had from providing service to its commercial customer and on anticipated wastewater volumes that will be generated by the 2-inch commercial meter and 5/8-inch residential metered water service. AAWW acknowledged that the 128 units would not be connected to the system immediately. Rather, construction would proceed in phases and customers would be added as soon as units were occupied. Under this scenario, AAWW will be incurring expenses and receiving revenues from these customers incrementally and, at least initially, its commercial customer will represent the majority of AAWW's expenses and revenues. We find this rate structure to be reasonable. The

base rate will cover the fixed costs associated with operating the water system and the volumetric rates will cover the variable costs that will be incurred as customers are added to the system. For these reasons, we find that the rates proposed by Staff and AAWW are just and reasonable.

Finally, we turn to the issue of rate case expenses. According to the stipulation, AAWW agrees to submit documentation of its rate case expenses and proposed rates to Staff for its review. Since Staff and AAWW have not yet proposed any rate case surcharge to customer rates, we will defer our consideration of this issue until both AAWW and Staff have submitted their recommendations.

Based upon our review of the stipulation agreement, supporting testimony, and exhibits provided at the hearing, we find the terms of the agreement are reasonable and will benefit customers of AAWW. We conclude that the stipulation and the rates established therein are just and reasonable and are consistent with the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the stipulation agreement presented by Staff and AAWW are hereby adopted and APPROVED as discussed herein; and it is

FURTHER ORDERED, that AAWW is authorized to collect from customers rates as identified in its amended tariff, filed in July 2008, and identified as Exhibit 3 herein; and it is

FURTHER ORDERED, that AAWW file with the Commission a compliance tariff within fourteen (14) days from the date of this order; and it is

FURTHER ORDERED, that AAWW shall file with the Commission documentation of its rate case expenses within thirty (30) days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of
September, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary