

DW 02-227

HANOVER WATER WORKS COMPANY

Petition for Authority to Enter into Modification Agreement
Of Terms & Conditions of Long Term Debt Financings

Order Nisi Approving Petition

O R D E R N O. 24,136

March 7, 2003

I. PROCEDURAL HISTORY AND BACKGROUND

On December 23, 2002, Hanover Water Works Company (the Company) filed a Petition with the New Hampshire Public Utilities Commission (Commission) for approval, *nunc pro tunc*, of a Modification Agreement (Agreement) modifying the terms and conditions of long term debt financing agreements previously approved by the Commission. The Company avers the Agreement was necessary due to the required full payment of a portion of its long term debt in July 2003.

The Company is a public utility providing water service to 1,998 customers in Hanover. As of December 31, 2001, its total assets amounted to \$7.8 million, including \$6.9 million of net utility plant. Its equity capital and liabilities totaled \$7.8 million, including \$1.2 million of equity, \$4.8 million of long term debt, and \$1.8 million of other liabilities, deferred credits and Contributions in Aid of Construction (CIAC).

The Agreement modifies two outstanding loan agreements the Company has with First NH Bank, n/k/a Citizen Bank. The first

loan, dated July 15, 1993 (1993 Bank Note), was for the purpose of various capital improvements and involved a loan amount of \$1,200,000. The second loan, dated January 10, 1997 (1997 Bank Note), was for the purpose of constructing administrative offices and involved a loan amount of \$60,000, an adjustable interest rate of 8.75%, and a balloon payment arrangement.

The Commission approved these financings in Docket No. DF 92-210, *Hanover Water Works Company*, 78 NH PUC 258 (1993), and Docket No. DF 96-346, *Hanover Water Works Company*, 81 NH PUC 863 (1996), respectively.

As of December 31, 2001, the Company had an outstanding balance of \$960,000 on the 1993 Bank Note, and \$49,817 on the 1997 Bank Note. According to the terms of the financing, \$48,000 of the 1993 Note was due on or before July 15, 2002 and the remaining \$912,000 would be due on or before July 15, 2003. The 1997 Bank Note balance of \$49,817 was due on or before July 10, 2002.

The Company began discussions with Citizens Bank to roll over the 1993 and 1997 Bank Notes into another financing agreement. On June 12, 2002, the Company and Citizens Bank of New Hampshire executed the Modification Agreement which contains the following terms: (1) the interest rate is fixed at 7.30%; and (2) all principal, interest, and other amounts due and outstanding shall be paid in full on July 15, 2007.

The Company states the Agreement is consistent with the public good and requests Commission approval. In support of the Agreement, the Company states its periodic loan payments will remain substantially the same. The remaining principal of the 1993 Bank Note shall continue to be amortized by equal annual payments of principal in the amount of \$48,000 with interest on amounts outstanding due and payable on the first day of April, July, October and January. The remaining principal of the 1997 Bank Note shall continue to be amortized by equal monthly payments of principal and interest in the amount of \$589.09, with payments payable on the 10th day of the month.

The Company states that the new Agreement results in no adverse impact upon net operating income. The Company in fact anticipates a positive impact on net income due to anticipated lower interest payments during the five year period from July 2002-2007.

The Company also states that the new Agreement will have no immediate impact on customer rates. If, however, the Company were to seek a general rate increase during the five year period from July 2002-2007, the anticipated lower interest rate would be reflected in the overall rate of return, reducing some portion of a general rate increase. Lastly, the Company states that some fees were incurred in negotiating the Agreement and in filing for

Commission approval, but that the Company does not seek recovery of the fees at this time.

On March 7, 2003, Staff filed a letter in support of Commission approval of the Modification Agreement. Staff, however, expressed their concern that the Company had failed to comply with RSA 369:1, which requires prior Commission approval before public utilities enter into long term debt financing arrangements.

II. COMMISSION ANALYSIS

New Hampshire RSA 369:1 authorizes public utilities to incur long term debt "with the approval of the commission but not otherwise." The standard of review of such filings is that the indebtedness must be "consistent with the public good." RSA 369:1. The Commission "has a duty to determine whether, under all the circumstances, a proposed financing is in the public good - a determination which includes considerations beyond the terms of the proposed borrowing." See *Appeal of Easton*, 125 N.H. 205, 213 (1984). To this end, we have previously approved the purposes of the 1993 and 1997 Bank Notes as consistent with the public good, as referenced above.

Our review of financing agreements also extends to the impact upon rates. We note for the record that the Commission approved the Company's last general rate increase in 2000. See *Hanover Water Works Company*, 85 NH PUC 131 (2000). Both the 1993 and 1997 Bank Notes were in effect at the time of the rate case

when the Commission undertook a thorough review of the Company's financial structure. In the instant petition, the Company states the interest rate of the new Agreement is lower than the original 1993 and 1997 Bank Notes. The maturity dates, however, have been extended and the Company states it has incurred costs in negotiating with Citizen's Bank and in pursuing Commission approval. At this time, these changes will have no impact upon existing rates and thus the Commission will defer its review of the matter. The costs associated with extending the maturity date of the debt and costs associated with seeking loan modification from ratepayers will be thoroughly reviewed by the Commission in the event the Company requests specific recoupment or initiates a rate proceeding.

Lastly, we wish to admonish the Company that they have requested Commission approval of a Modification Agreement that was executed back on June 12, 2002. RSA 369:1 clearly states prior Commission approval is required before a public utility can enter into financial agreements involving long term debt. Here, the Company filed for approval some six months after the fact. The fact that this matter is a modification of the terms of bank notes which were previously approved by the Commission does not excuse the failure to comply with the statutory requirements.

Moreover, we also note that the Company's request for an order *nunc pro tunc* in this matter appears to misapprehend the

nature of such an order. An order *nunc pro tunc* may be appropriate where the requested relief is "ministerial," such as the failure of a clerk to enter a judgment, or where a judgment is entered incorrectly, but it is not appropriate where the requested relief requires a "judicial act" such as the rendition of a judgment upon a hearing or investigation. See *Coulter v. Coulter*, 550 A.2d 112, 114, 131 N.H. 98, 101 (1988). In this instance, the review of the Commission undertaken pursuant to RSA 369:4 is not "ministerial," even where the underlying purpose of the bank notes had been previously reviewed and approved.

Although we will provide our approval for this financing request, and, as the approval of the amended terms will not have an impact upon rates, we will make our approval retroactive to the date of the implementation of the new agreement, we caution the Company to strictly adhere to the requirements of RSA 369:1 in the future.

Based upon the foregoing, it is hereby

ORDERED NISI, that, pursuant to RSA 369:1-4, the Commission finds the Modification Agreement with Citizens Bank, and upon the terms and conditions as set forth in the Company's petition and accompanying loan agreement with Citizen's Bank, is consistent with the public good; and it is

FURTHER ORDERED, that the Commission hereby approves the Modification Agreement pursuant to RSA 369:1; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than March 17, 2003 and to be documented by affidavit filed with this office on or before March 31, 2003; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than March 24, 2003; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 31, 2003; and it is

FURTHER ORDERED, that this Order Nisi shall be effective April 4, 2003, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New
Hampshire this seventh day of March, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary