

DW 03-150

HAMPSTEAD AREA WATER COMPANY

**Petition Requesting Franchise Approval and
Approval of Initial Rates**

**Order Approving Procedural Schedule and Noticing Intent to Seek
Rates**

O R D E R N O. 24,221

October 24, 2003

APPEARANCES: Robert H. Fryer, Esq. on behalf of Hampstead Area Water Company; William Homeyer of the Office of Consumer Advocate on behalf of Residential Ratepayers, and Marcia A.B. Thunberg, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On August 4, 2003, Hampstead Area Water Company Inc., (Hampstead) filed with the New Hampshire Public Utilities Commission (Commission) a request for franchise authority to provide water service in a limited area in the Town of East Kingston, New Hampshire, and to establish rates for such service. The franchise area includes two proposed condominium developments known as "Cricket Hill/Maplevale Farms and Woods" and "Residences at Maplevale" which, when completed, will contain a total of 106 condominium units and 22 subdivision lots. A single water system will serve the developments.

In its petition, Hampstead indicates that the system currently serves ten customers. In support of its Petition,

Hampstead states that the system is not interconnected with any other part of existing Hampstead systems and is located more than five miles from Hampstead's closest system. The selectmen for the Town of East Kingston have acknowledged they were notified of the franchise petition. Hampstead has received a permit from the Department of Environmental Services to operate the system. Hampstead also submitted a Management Agreement with Lewis Builders Development, Inc. to manage and operate the water system. Hampstead anticipates acquiring the water system assets at a later date when it obtains financing approval from the Commission. Lastly, Hampstead states it is willing and able to supply water service to the proposed franchise area.

On September 17, 2003, a duly noticed Prehearing Conference was held. Thereafter, the parties and Commission Staff (Staff) met in a technical session to develop a proposed procedural schedule for the remainder of the docket.

On September 23, 2003, Staff submitted to the Commission a proposed procedural schedule as follows:

Data Requests to Hampstead	September 25, 2003
Hampstead Responses	October 3, 2003
Data Requests to Hampstead	October 10, 2003
Hampstead Responses	October 17, 2003
Technical Session/ Settlement Discussions	November 4, 2003
If settlement is reached:	
File Settlement Agreement	November 14, 2003
Hearing on Settlement Agreement	December 3, 2003

If settlement is not reached:	
Staff and Intervenor Testimony	November 20, 2003
Data Requests to Staff/Intervenor	November 26, 2003
Data Responses	December 5, 2003
Rebuttal Testimony	December 18, 2003
Hearing on Merits	January 6, 2004

On September 26, 2003, Hampstead submitted an amendment to their filing to clarify its intent to seek initial, rather than temporary, rates. These initial rates would not be subject to reconciliation. On October 6, 2003, the Office of Consumer Advocate (OCA) filed a notice of its intent to participate.

II. POSITIONS OF THE PARTIES AND STAFF

A. Hampstead

Hampstead requested approval of its franchise request. Hampstead stated that there is no other franchised water utility in the area and that one of its franchises is five miles away. Hampstead explained that the system is already serving customers. Hampstead is not billing customers for this service, but proposes a rate to cover its expenses.

For rates in the proposed franchise, Hampstead requests approval of a \$25.49 flat rate per quarter. Hampstead characterizes this rate as an initial rate.

B. Office of the Consumer Advocate

The OCA did not take a position on Hampstead's petition at this early juncture of the docket.

C. Staff

Staff noted that the requirements of RSA 374:22 which requires an entity to come before the Commission for franchise approval prior to the development of the water system. Staff noted Hampstead is requesting franchise approval after the water system has been developed and is serving customers. Staff stated it will evaluate Hampstead's petition, conduct discovery and make a recommendation to the Commission.

III. COMMISSION ANALYSIS

Having reviewed the proposed procedural schedule, we find the schedule is reasonable and will aid in the orderly review of Hampstead's filing. We assume that the parties and Staff have been operating under the proposed dates in anticipation of approval by the Commission. We acknowledge Hampstead presently has three different dockets before the Commission: DW 02-128 involving a rate case and request for consolidated rates; DW 02-198 involving a franchise approval request for Cornerstone Estates, Camelot Court, and Lamplighter Estates; and the instant docket, DW 03-150. It was represented at the Prehearing that the schedule for DW 03-150 would be tailored to fit within the schedule for DW 02-128 and DW 02-198. We note that it does. We will thus approve the procedural schedule for the duration of the proceeding.

We note the procedural schedule also includes a hearing on rates proposed for this franchise. The intent to seek rates was previously noticed for this docket, without specifying the actual amount. Based on its filings, Hampstead proposes a rate of \$25.49 per quarter as an initial rate, not subject to reconciliation. It is not absolutely clear if this rate would also serve as a permanent rate, or whether it is a rate subject to further notice and proceedings upon transfer of the utility assets. To make clear to customers the full extent of Hampstead's proposal, we direct Hampstead to notify interested persons of the proposed rate by mailing via first class mail, a copy of this order to existing customers, and the Town Clerk and Board of Selectmen for the Town of East Kingston.

We next turn to the issue of Hampstead's compliance with RSA 374:22, which provides as follows:

"No person or business entity shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission."

Hampstead first filed a notice of its intent to drill a well for this development on December 13, 2002. The Commission replied on January 28, 2003 that a new docket should

be opened to take up the issue of the new development.

Hampstead commenced construction of the condominium development and water system sometime after December and before it filed for franchise approval on August 4, 2003.

In its August 4 filing, Hampstead stated that the water system was "already up and running and serving ten (10) completed and occupied homes in the project." This is contrary to the legislative requirement of RSA 374:22. This is not the first time Hampstead has filed for franchise approval *after* it had served customers without authorization; docket No. DW 02-198, presently before the Commission, involves franchise approval for a water system already providing water to end users.

We require regulated utilities to comply with statutory mandates and we require as much of Hampstead. Hampstead is an experienced water utility cognizant of its statutory obligations including RSA 374:22.

RSA 374:22 is a vital planning tool which promotes orderly development of utility franchises. The Commission acts as the forum before which potential franchising entities demonstrate their managerial, financial, technical and legal expertise to operate a water utility. The Commission's assessment of competence in operating a utility and oversight of the orderly development of franchises is compromised when

entities disregard RSA 374:22 and develop a utility prior to franchise approval.

In the instant case, Hampstead is providing service to customers, using utility facilities owned and operated by Lewis Builders Development Company. Customers purchased homes with the understanding they had access to water service. Should Hampstead fail to demonstrate competence in operating a utility, it would no longer serve these customers, and these customers would be left without water service.

RSA 374:22 mandates that no one can provide utility service without Commission approval. The Commission cannot waive statutory obligations. The Commission finds the risks posed to the customers noted in DW 03-150 in Cricket Hill/Maplevale Farms and Woods and Residences at Maplevale and customers noted in DW 02-198 in Cornerstone Estates, Camelot Court, and Lamplighter Estates by Hampstead's non-compliance with RSA 374:22 intolerable. In light of the circumstances described above, the hearing in this matter will also address the issue of whether Hampstead should be fined for its failure to comply with RSA 374:22. See RSA 365:41. Accordingly, Hampstead shall file testimony on this subject.

Based upon the forgoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is APPROVED; and it is

FURTHER ORDERED, that Hampstead notify interested persons of the proposed rate by mailing via first class mail, on or before October 28, 2003, a copy of this order to existing customers, Town Clerk and Board of Selectmen for the Town of East Kingston; and it is

FURTHER ORDERED, that Hampstead shall file testimony no later than November 20, 2003 regarding imposition of fines pursuant to RSA 365:41; and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to Hampstead and the Office of the Consumer Advocate on or before October 31, 2003, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin Rule Puc 203.02 and RSA 541-A:32, I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before 12:00 noon on November 3, 2003.

By order of the Public Utilities Commission of New
Hampshire this twenty-fourth day of October, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary