

DW 02-128
DW 02-198

HAMPSTEAD AREA WATER COMPANY

**Petition for Rate Increase and
Petition for Franchise and Financing Approval**

**Order Approving Procedural Schedule and
Order Granting Motion for Protective Treatment**

O R D E R N O. 24,241

November 21, 2003

I. BACKGROUND

This matter involves two filings made by Hampstead Area Water Company, Inc. (Hampstead). On September 27, 2002, Hampstead filed with the New Hampshire Public Utilities Commission (Commission) a petition to increase its permanent rates for its Hampstead Area Water Company, Walnut Ridge Water Company and Lancaster Farm divisions, effective October 1, 2002, which was docketed as DW 02-128. On October 25, 2002, Hampstead filed with the Commission a petition seeking authority to purchase equipment, obtain franchises, and incur debt, which was docketed as DW 02-198.

The Commission issued orders suspending the proposed tariffs and setting dates for prehearing conferences and technical sessions. The Town of Hampstead and the Office of the Consumer Advocate became participants in these dockets. The Commission issued an order approving a proposed procedural schedule, which sequenced the issues to be addressed in the two

dockets. Pursuant to the procedural schedule, the Commission would consider the franchise expansion matters first, and then determine the rate to apply to Hampstead's service territories. The Commission also held a hearing on Hampstead's request for temporary rates in DW 02-128, and granted temporary rates at existing levels by Order No. 24,119 (January 31, 2003).

On March 10, 2003, Staff and the Parties requested that the procedural schedule be temporarily suspended. The Commission granted the suspension request by a Secretarial Letter dated March 25, 2003.

On September 17, 2003, Hampstead filed a Motion for Treatment of Certain Financial Information of Related Party as Confidential pursuant to NH Admin. Rule Puc 204.06. Hampstead filed the information in response to questions raised by Audit Staff regarding the overhead costs of Lewis Builders Development Inc. (Lewis Builders), which is Hampstead's contractor for management services. In support of its motion, Hampstead argues that Lewis Builders' overhead costs are commercially sensitive and, if released to the public, would constitute an invasion of privacy. Hampstead states that Lewis Builders keeps the overhead information confidential and takes steps to prevent public disclosure of the information. Hampstead further avers that disclosure of the information would put Lewis Builders at a competitive disadvantage.

On October 30, 2003, Staff filed a letter with the Commission indicating it concurred with Hampstead's motion for confidential treatment and that the Office of the Consumer Advocate takes no position on the motion.

On October 3, 2003, Staff submitted a proposed procedural schedule for Docket Nos. DW 02-128 and DW 02-198, with further modifications filed on November 13, 2003, as follows:

Phase One (DW 02-198)

Final Audit Report	October 20, 2003
Settlement Conference	November 4, 2003
File Settlement Agreement, if any	November 17, 2003
Hearing on the Merits	December 3, 2003

Phase Two (DW 02-128)

Supplement to Rate Filing	November 14, 2003
Data Requests to Company	December 11, 2003
Data Responses from Company	January 8, 2004
Data Requests to Company	January 29, 2004
Data Responses from Company	February 19, 2004
Technical Session	March 4, 2004
Testimony from Staff, OCA and Intervenors	April 1, 2004
Data Requests from Company	April 15, 2004
Data Responses from Staff, OCA and Intervenors	April 29, 2004
Settlement Conference	May 13, 2004
Rebuttal Testimony	May 24, 2004
File Settlement, if any	May 27, 2004
Hearing	June 9, 2004

On November 17, 2003, Staff and Hampstead filed a Stipulation in DW 02-198.¹ The Stipulation provides, among other

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The November 17, 2003 letter also addressed DW 03-150, a related but not consolidated docket involving Hampstead's franchise application for Cricket Hill and Maplevale developments.

things, that Hampstead will not seek to impose rates at this time on customers located in Camelot Court, Cornerstone Estates and Lamplighter Estates, the new franchise area in DW 02-198.

III. COMMISSION ANALYSIS

The proposed procedural schedule, as with the previous schedule, disposes of issues relating to DW 02-198 prior to issues relating to DW 02-128. We believe that determining the geographic footprint of the utility's service territory, or franchise, is essential before determining what rates to impose in that franchise. Proceeding with rate case issues in DW 02-128 prior to determining which plant assets, as proposed in DW 02-198, are included in a company's rate base would complicate the calculation of reasonable rates for customers in the proposed franchise area. The proposed schedule will alleviate those complications. For these reasons, we find that the proposed schedule is reasonable and will aid in the orderly review of Hampstead's filings. We will approve the procedural schedule for the duration of the proceedings in DW 02-198 and DW 02-128.

With respect to Hampstead's motion for confidential treatment, N.H. Admin. Rule Puc 204.06 provides that "the Commission shall grant confidentiality upon its finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5,IV, or other provisions of law

based on the information submitted...." RSA 91-A:5, IV provides an exception to the general rule of public disclosure for "confidential, commercial or financial information." In interpreting this provision, the New Hampshire Supreme Court has instructed agencies of state government to interpret this exemption narrowly, applying a balancing test in order to determine whether "the asserted private, confidential, commercial or financial interest" is outweighed by "the public's interest in disclosure." *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552-53 (1997).

In applying this balancing test, the Commission must determine whether the benefits of public disclosure of financial information relating to the calculation of overhead of Hampstead's contractor, Lewis Builders, outweigh the harms from disclosure. We weigh the benefits and harms regardless of whether Lewis Builders customarily regards the information as confidential. The party resisting disclosure must prove more than just that it regards the information as confidential, it must demonstrate that substantial harm will result to its competitive position. *Id.* at 554.

In support of its motion, Hampstead represents that the information is commercially sensitive to the contractor and, that if released to the public, the act would constitute an invasion

of privacy. Hampstead further avers that disclosure of the information would put the contractor at a competitive disadvantage.

We have previously found information contained in transition service supply contracts, the identity of gas suppliers, and commodity and demand charges associated with gas supplies should be exempt from disclosure under RSA 91-A. See, e.g., *Granite State Electric Company*, 84 NH PUC 310 (1999); *Energy North Natural Gas, Inc. dba KeySpan Energy Delivery New England*, 86 NHPUC 152 (2001). Information relative to overhead calculations of Lewis Builders bears resemblance to those examples of confidential, commercial or financial information. Lewis Builders could suffer competitive disadvantage as a result of disclosure of its overhead calculations. No party has objected to the motion or articulated any benefits of disclosure of the overhead information. We will surmise, however, that the objective of facilitating access to all public documents and, in this case, to documents relating to the Commission's review of Hampstead's rates pursuant to RSA 378 are considered benefits. We note, however, that intervenors will be able to view confidential information upon executing a confidentiality agreement. Based on Hampstead's representations, and under the balancing test we have applied in prior cases, we find that the

benefits to Hampstead's contractor, Lewis Builders of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and Puc 204.06.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule set forth above is APPROVED and shall govern the remainder of these proceedings; and it is

FURTHER ORDERED, that Hampstead Area Water Company's motion for confidential treatment of Lewis Builders Development, Inc.'s financial information is GRANTED; and it is

FURTHER ORDERED, that the determination as to protective treatment made herein is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

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

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

DW 02-128
DW 02-198

Debra A. Howland
Executive Director & Secretary