

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Housatonic Water Works Company

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D.P.U. 23-65

NOTICE OF DELAY OF SETTLEMENT PHASE 2 IMPLEMENTATION

The Settlement Agreement approved by the Department of Public Utilities (“Department”) on July 31, 2024¹ approved a schedule for implementing rates in five phases to recover costs of major capital projects that Housatonic Water Works Company (“Company”) contemplated would be placed in service over several years through 2028. At the time of the execution of the Settlement Agreement, the manganese filtration project that was planned to address water discoloration, which has been the primary source of customer complaints about service quality, was expected to be in service by the end of 2024. This project has been delayed because the Company’s lenders have declined to finance the project due to financial risks that arose subsequent to the Department’s approval of the Settlement Agreement.

On August 22, 2024, the Board of Health of the Town of Great Barrington issued an order, as modified by a Board of Health order served on September 17, 2024, directing the Company, among other things, to retain a consultant selected by the Board of Health to test the water supplied by the Company for a period and within intervals to be determined by the consultant, and to distribute on a daily basis an indeterminate quantity of bottled water equal to or greater than 1.5 gallons per day to all customers until the Board of Health orders otherwise, which would have left the Company with a revenue shortfall greater than \$40,000 per month on

¹ The Town of Great Barrington and the Town of West Stockbridge appealed the July 31, 2024 Department Order to the Supreme Judicial Court. SJC Docket SJ-2024-0312.

average. On October 21, 2024, the Berkshire Superior Court granted a preliminary injunction against the Board of Health in favor of the Company, holding that the Board of Health is preempted from issuing the order because the Commonwealth gave exclusive power to the Massachusetts Department of Environmental Protection to oversee the distribution of safe water, and because the clear language of Chapters 164 and 165 “demonstrates a legislative intent for DPU to occupy the field at the state level in the regulation of water quality.”² Despite the Department’s exclusive jurisdiction over the regulation of water quality, the Town of Great Barrington and its Board of Health have opted to prolong this litigation by appealing the Superior Court ruling on November 20, 2024.

As the Town of Great Barrington’s representatives are aware through the Company’s pleadings, the Board of Health’s order would have placed the Company at risk of financial insolvency within a short period. The Company’s lenders have declined to finance the Company’s capital projects until the Board of Health’s order is definitively invalidated or rescinded. While the Company has received a grant to cover a portion of the manganese removal project, the majority of the financing is conventional, and the Company’s long-time lender is awaiting the resolution of this issue before issuing financing. Assuming the matter is resolved in the Company’s favor in early 2025, the Company will petition the Department for approval of the financing as soon as its lenders provide indicative terms and hopes to commence the project and place it in service in the first half of 2026.

This will delay the implementation of the rate increases provided by the Settlement Agreement. The Phase Effective Date for Phase 2 was to have been August 1, 2025. Section 1.2.1 of the Settlement Agreement provides that “if the commissioning date for any project is

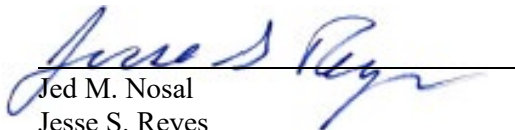
² *Housatonic Water Works Company v. Town of Great Barrington et al.*, Memorandum and Decision and Order on Plaintiff’s Motion for Preliminary Injunction (Berkshire Super. Civ. No. 24-0150, Oct. 21, 2024).

delayed beyond the otherwise applicable Phase Effective Date, the Phase Effective Date shall be on the first day of the month following the date that the project is in service.” The Department’s Order approving the Settlement Agreement modifies this term by ordering that “the Company shall submit its compliance filings to the Department at least four months before the applicable phase effective date to afford sufficient time for review and deliberation before the rates take effect.” D.P.U. 23-65, at 29. Because the Company needs time to fully validate its compliance filing and to meet with the Attorney General and the Towns of Great Barrington, Stockbridge, and West Stockbridge before filing,³ the Phase Effective Date would need to be delayed to *at least* four months after the commissioning date of the project, likely in mid-2026.

Respectfully submitted,

**HOUSATONIC WATER WORKS
COMPANY**

By its Attorneys,



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³ See D.P.U. 23-65, at 29 n.9.