

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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Housatonic Water Works Company

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D.P.U. 23-65

**HOUSATONIC WATER WORKS REPLY COMMENTS**

Pursuant to the May 1, 2024 Hearing Officer Memorandum, Housatonic Water Works Company (“Company”) hereby files its reply comments with the Department of Public Utilities (“Department”) on the proposed settlement agreement (“Settlement Agreement”) between the Company and the Attorney General’s Office (“Attorney General”, and together with the Company, the “Settling Parties”). The Company responds to the comments and statements of the Town of Stockbridge (“Stockbridge”), the Town of West Stockbridge (“West Stockbridge”), and Town of Great Barrington (“Great Barrington”) as follows. The Department should approve the proposed Settlement Agreement as filed<sup>1</sup> by the Company and the Attorney General because it results in rates that are consistent with Department precedent and is in the public interest in light of the information submitted by the Company in its initial filing, its responses to information requests, the explanatory statement of the Settlement Agreement, and the responses to information requests by the Settling Parties. In addition, the proposed Rules and Regulations, M.D.P.U. No. 24, are just and reasonable.

**I. INTRODUCTION**

The Company’s rates have not been increased since November 2017. There is no material dispute that in the nearly seven years since then, the Company’s cost of service has increased. At

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<sup>1</sup> This would include the corrections to typographical errors explained in Exh. DPU-SP-2-3 and Exh. DPU-SP-3-1.

the same time, the Company has invested in capital improvements as part of its long-term capital improvement plans. (See Attachment DPU-1-3 part 9, at 243–244; Attachment DPU-1-4, at 10; Attachment DPU-4-3). The Company is mindful that the cost of upcoming capital projects will be significant in comparison to the size of the Company’s customer base and current rate base. However, no party has disputed that the major capital improvement projects in the Settlement Agreement’s Capital Project List are necessary, (see, e.g., Stockbridge Comments at 14 (“There can also be no reasonable debate that the path to providing that service requires capital investment”); West Stockbridge Comments at 2 (“these repairs are urgently needed”), and the Manganese Filtration System project specifically has been required by the Massachusetts Department of Environmental Protection (“MassDEP”).

Contrary to allegations by the Towns of Stockbridge and West Stockbridge, the need to approve the proposed capital project schedule is not the result of the Company’s neglect or a “crisis.” (See Stockbridge Comments at 14; West Stockbridge Comments at 2). Rather, the Manganese Filtration System project has been the subject of solution studies that began in 2020 and pilot testing of the Greensand Plus filtration technology, review, and approval by MassDEP, all of which were required before the Company could implement the proposed solution. (See Exh. AG-1-7; Attachment DPU-1-8; Exh. DPU-1-10; Attachment GB-1-4-3, at 2-3; Exh. DPU-5-1). A copy of the final pilot study quarterly report is attached hereto as Exhibit HWWC-1.<sup>2</sup> A copy of MassDEP’s approval of the treatment process on March 25, 2024 is attached hereto as Exhibit HWWC-2.<sup>3</sup> The Company does conduct long-term asset planning, having developed a 20-year Capital Improvement Plan contained in the Company’s 2016 Master Plan, as acknowledged by

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<sup>2</sup> In addition to the responses to discovery, the Company requests that Exh. HWWC-1 be entered into evidence. Copies of the three previous quarterly reports were submitted as Attachments DPU-1-9(a) through (c),

<sup>3</sup> The Company requests that Exh. HWWC-2 be entered into evidence.

MassDEP in the Company's most recent sanitary survey. (Attachment DPU-1-4, at 43). The plan is updated as the Company's engineers develop additional modeling of the water distribution system. (See, e.g., Exh. DPU-1-12). The other projects on the Capital Project List are part of the Company's ten-year system improvement plan. (Exh. DPU-1-13). The Settlement Agreement would address the Company's current revenue deficiency and establish a schedule for necessary near-term capital improvements in up to five phases and a path for cost recovery implemented annually.

The Settlement Agreement reduces the Company's proposed revenue increase for rates that will take effect August 1, 2024, from \$808,808 to \$129,153 ("Phase 1"). An increase in the Company's base distribution revenue requirement of \$221,222 (not including revenue requirements for the future capital projects) will result in just and reasonable rates because it would likely be no higher than the increase that would result from litigation. The Settlement Agreement also permits rate relief to customers that the Department otherwise would not ordinarily order in a litigated rate case, because it would defer a portion of the revenue increase, resulting in an 18 percent increase in Phase 1, instead of a 29.43 percent increase.

The Settlement Agreement would implement guardrails on the costs of service that may be recovered during the settlement term by setting caps on the revenue increases for each phase, limiting the increases to actual incremental costs attributable to the capital projects, and subjecting rate recovery to prudence review. It would also defer part of the cost of service for the Manganese Filtration System project, a major capital improvement investment, from Phase 2 to Phase 3.

If the Settlement Agreement is not approved, the Company would likely have to petition for a base distribution rate increase after every major capital improvement is placed in service. In addition, the Company would propose a capital investment cost recovery mechanism for its

ongoing ten-year pipe replacement project for more timely recovery of those costs. See, e.g., Aquarion Water Company of Massachusetts, Inc., D.P.U. 17-90, at 63 (2018). Approving the Settlement Agreement would avoid litigation costs of the current rate case and the serial base distribution rate case filings that would otherwise result in increased costs to the Company's customers.

## **II. RESPONSE TO TOWN OF STOCKBRIDGE COMMENTS**

### **A. Financing and Grants**

Stockbridge argues that the Company must make “a clear and definitive demonstration that it has secured the best possible financing” and that it “should already have explored such financing” to support the capital projects. (Stockbridge Comments at 9). Stockbridge asserts that the Commonwealth of Massachusetts' Clean Water Trust and the American Rescue Plan Act Funding – Water Infrastructure Grants are available to fund the projects. (Id.).

The Settlement Agreement already addresses the Company's obligation to show that it has secured the best possible financing. The Settlement Agreement contemplates that, after each capital project is placed in service, the Company would submit a compliance filing showing the actual incremental revenue requirement, which would be subject to the Department's prudence review. (Settlement Agreement § 1.2.1). The steps that the Company has taken to secure financing would necessarily be part of that filing and Department review.

Contrary to Stockbridge's claim that “the Company did not research, find, or apply for any grant programs prior to filing its petition,” the Company explained in its responses to information requests that it had sought and tracked public financing or grant funding opportunities for the projects through various channels, including MassDEP, the Rural Community Assistance Partnership, and the Massachusetts Rural Water Association, but did not apply because it was either not eligible as a privately owned water company or because the major capital projects would

not have qualified due to the need for additional studies to be completed. (Exh. STB-2-1). Further, PFAS and PFOA contamination, which is prevalent in many water systems, has been the focus of the majority of grants awarded to utilities seeking funding at the time.<sup>4</sup> Specifically, funding was not available for the haloacetic acid (“HAA5”) treatment project. The Company has received grants in the past reducing costs for other essential projects. The Company is continuing to seek funding for the future projects. (Exh. DPU-4-5; Exh. DPU-4-6). The Company now has a grant application in process (submitted with the support of MassDEP to the U.S. Environmental Protection Agency) for the upcoming Manganese Filtration System project, and if the grant is confirmed, it will be reflected in the Company’s Phase 2 compliance filing. Further, the Company provided the Great Barrington Fire District a letter in support of its application for a grant related to its project to interconnect with the Company’s system. (Exh. HWWC-3).<sup>5</sup>

Stockbridge’s assertion that “reducing the projected financing cost for Phase II could potentially reduce or eliminate the need for a Phase I increase” seems to be based on a misunderstanding of Company’s current revenue deficiency and the partial deferral of the revenue increase to Phase 2. Financing for the Phase 2 project has no bearing on the need for an increase in rates in Phase 1 (and the partial deferral of the rate increase to Phase 2). Under the Settlement Agreement, the agreed-upon base distribution rate increase does not include any of the cost-of-service for the future capital projects. The “current” revenue deficiency is \$211,222. (Settlement Agreement § 1.1.2). The Phase 1 Scheduled Revenue Increase would be \$129,153, which does not fully recover the revenue deficiency, the remainder of which will be deferred to Phase 2.

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<sup>4</sup> See, e.g., MassDEP Emerging Contaminants in Small or Disadvantaged Communities Grant Program, *available at* <https://www.mass.gov/info-details/emerging-contaminants-in-small-or-disadvantaged-communities-grant> and <https://www.epa.gov/dwcapacity/emerging-contaminants-ec-small-or-disadvantaged-communities-grant-sdc> (last visited June 6, 2024).

<sup>5</sup> The Company requests that Exh. HWWC-3 be entered into evidence.

(Settlement Agreement § 1.3.1). Further, the estimated cost of the Manganese Filtration System project is \$1,670,500 (Exh. JJM-1, at 5), compared to the Company's test year rate base of \$1,664,972 in the Company's original petition. (Exh. GCW, Sch. B-1(w)).<sup>6</sup> Given the relative magnitude of the investment, financing the Phase 2 project would not be possible without addressing the revenue deficiency.

## **B. Manganese Treatment Technology**

Stockbridge questions whether the manganese filtration solution that the Company has selected is the best solution, will be effective, and is the least cost solution. (Stockbridge Comments at 12). The chosen solution has been studied and tested extensively. The Company's engineers investigated the cause of the water discoloration and identified seasonal manganese as the primary cause. (Exh. AG-1-7). The Company explored alternative solutions, including a complete replacement of the existing sand filters with a new high-tech process of filtration. (Attachment DPU-1-8). However, this option was deemed unsuitable due to substantial backwash issues, as the facility is not connected to the town sewer. (See Exh. DPU-5-5). After careful consideration, it was determined that the addition of Greensand Plus filtration offered the most cost-effective solution and a symbiotic relationship with the existing plant. The pilot study further confirmed the effectiveness of the Greensand Plus filtration system. (Attachments DPU-1-9(a) through (c); Exh. HWWC-1). On March 25, 2024, MassDEP approved the pilot study report finding that the piloted Greensand Plus filtration system demonstrated consistent and effective removal of manganese. (Exh. HWWC-2). The Department should defer to MassDEP's finding and approval of the technology. The proposed solution does not require additional review by the Department.

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<sup>6</sup> The test-year rate base did not include the HAA5 project.

### **C. Return On Equity**

Stockbridge argues that the Department should reduce the Company's "rate of return (for example to 4%)" until the capital investments are fully deployed and effective. (Stockbridge Comments at 12). Such a rate would be below the Company's cost of debt (exh. GCW, sch. D-1(w)) and amount to an unconstitutional taking. Even if the Department assumed that Stockbridge meant to argue that the Company's return on equity should be reduced, that would still be improper. Under the Settlement Agreement, the Company's return on common equity is 9.5 percent. That is already below the range within which the Department deems a return on equity to be a fair and reasonable allowed return on equity for water companies by regulation. 220 C.M.R. § 31.03. Changing the Department's regulations is beyond the scope of this proceeding.

### **D. Costs and Long-Term Planning**

Finally, Stockbridge argues that the underlying issue is the Company's increasing cost of service and the need for a "longer-term vision of the Company's operations and how it can viably supply appropriate quality to water to its customers in the future, at rates that are reasonable and comparable to other consumers in the Commonwealth." (Stockbridge Comments at 13). The Company agrees that it has an obligation to provide customers with drinking water of acceptable quality. That cannot be achieved by disallowing the base distribution revenue increase and the cost of service for capital improvements that no one disputes are needed. Stockbridge admits that "[t]here can also be no reasonable debate that the path to providing that service requires capital investment." (*Id.* at 14). Stockbridge's assertion that longer-term planning is necessary does not detract from the Settlement Agreement. Although the Settlement Agreement only provides for a five-year capital investment schedule, that is only a part of the Company's long-term Capital Investment Plans.

### **III. RESPONSE TO WEST STOCKBRIDGE COMMENTS**

West Stockbridge similarly argues that the Company has “put off maintenance of its aging infrastructure” and has failed to maintain the system. (West Stockbridge Comments at 1–2). West Stockbridge argues that solution is for the Department to order the Company “to pursue grants and/or lower-interest loans or to find a purchaser that could responsibly serve the public.” (Id. at 2). As discussed above, capital improvements have not been neglected. The Company has made capital investments since its last rate case and has a long-term Capital Investment Plan. (See Exh. DPU-1-15). The Manganese Filtration System project required time for studies and pilot testing to be completed and MassDEP approval before construction could begin. The Company has already committed to investigating and pursuing commercially reasonable lower-cost financing or grants to support the projects. If the Department approves the Settlement Agreement, the Company’s financing efforts for those projects would be subject to Department prudence review. Thus, the Department does not need to make a specific directive to pursue grants or lower-interest loans. Finally, while the Department may have jurisdiction to review the sale of the Company to a private entity, it does not have jurisdiction to direct the Company to find a purchaser.

### **IV. RESPONSE TO GREAT BARRINGTON COMMENTS**

Although the Department’s procedural schedule required parties to the proceeding to file comments by May 30, 2024, Great Barrington did not file substantive comments. Instead, Great Barrington summarized an email exchange with the Hearing Officer that clarified that the deadline for Parties to file comments was not changed by the Notice of Virtual Public Hearing on Proposed Settlement, but that representatives of the Parties would have the opportunity to attend the public hearing and provide a live statement of their position on the settlement. (Great Barrington Comments at 1). To the extent that the Department considers Great Barrington’s representatives’

statements at the public hearing to be substantive Party comments (as opposed to “public comments”), due process requires the Department to grant the Company the opportunity to reply.

## **V. CONCLUSION**

**WHEREFORE**, for the foregoing reasons, the Department should approve the Settlement Agreement as proposed.

Respectfully submitted,

**HOUSATONIC WATER WORKS COMPANY**

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