

Commonwealth of Massachusetts
Department of Public Utilities

Petition of Housatonic Water Works Company,
pursuant to G.L. c. 164, § 94, G.L. c. 165, § 2, and
220 CMR 5.00 for Approval of a General Increase
in Rates

No. 23-65

**TOWN OF STOCKBRIDGE RESPONSE TO HOUSATONIC WATER WORKS' NOTICE OF
DELAY OF SETTLEMENT PHASE 2 IMPLEMENTATION**

Intervenor, the Town of Stockbridge (“Stockbridge”), submits this response to the Petitioner, Housatonic Water Works Company’s (the “Company”) Notice of Delay of Settlement Phase 2 Implementation (the “Notice”).

OVERVIEW

Stockbridge is severely disappointed by the Notice. The Company’s customers face a crisis. Like anyone in the Commonwealth, they have a right to clear, clean, potable drinking water. It is a fundamental human right many take for granted, but one that the Company’s customers are not getting. Instead, they dutifully pay their monthly water utility bills to the Company – even more now after Phase 1 of the settlement – with no improvement in water quality. While the settlement was supposed to address that crisis in the near term, the Notice places hope in doubt. Stockbridge understands that the Company is small, has a limited customer base, and has specific financial challenges. But as explained more in this Response, the Company’s Notice comes unexpectedly, six months following the Department’s approval of the settlement, and reveals that the Company has made virtually no effort to move the ball forward on Phase 2.

Stockbridge is ready to collaborate with the Company’s representatives on this task. As the Town advocated during the Department’s hearing about the settlement, there are opportunities to find alternative financing or grant options that would defray the cost of Phase 2 and move it

forward far more expeditiously. Even without those opportunities, there are essential efforts that any company motivated to address this problem would take to get the capital infrastructure in place for manganese filtration. The Company's Notice, however, suggests that the Company is not particularly interested in Phase 2 but is happy to delay matters, having already pocketed its Phase 1 rate increase with a healthy but unearned rate of return. The Notice recites no other efforts to keep Phase 2 on track. Moreover, it recites no efforts to reach out to the Towns, such as Stockbridge, to collaborate to find financing alternatives, as the Company was obligated to do under Section 1.2.4 of that agreement. This lack of effort is deeply disappointing to Stockbridge.

The Company must take its water quality crisis seriously. It is equally critical that the Company honor its Settlement Agreement by showing a greater willingness to work with the Towns, as the Settlement Agreement requires. To date, all the Company has done is pocket its Phase 1 rate increase, with few efforts to move the ball forward on Phase 2, and the Company will only be enriched further by those Phase 1 increases as the delay drags on. The Department should not let that behavior stand. With this Response, Stockbridge is filing a Motion for Enforcement of the Department's Order on Joint Motion to Approve Settlement Agreement ("Motion") seeking both investigation into the Company's efforts to comply with the Order and prospective suspension of the Phase 1 rate increases to avoid unjust enrichment to the Company, unless or until the Company shows compliance with the Department's July 31 Order ("Settlement Order"). Six months have gone by with no tangible progress. The Department should demand far more from the Company. The ratepayers deserve better.

RESPONSE

1. Alternative Financing Options Need Better Exploration

Alternative financing and grant options will likely be available to fund Phase 2 capital investments. Stockbridge has consistently demonstrated the availability of those options and the benefits of such financing for ratepayers. Beginning with prefiled testimony from Patrick White

(STB-PW-1), Stockbridge explained the need to thoroughly explore these options and the positive impact on rates that securing one more alternative might have for the Company’s customers. Later, in his comments on the Company’s proposed settlement, filed on May 30, 2024, Selectman White went into even greater detail, identifying two viable options: the Commonwealth of Massachusetts’ Clean Water Trust and American Rescue Plan Act Funding Water Infrastructure grants. Both present opportunities to reduce the financial burden on customers.¹

Unfortunately, the Notice provides almost no information about the Company’s efforts. Only one sentence in the otherwise meager two-page submission addresses the topic: “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.” From what can be gleaned from the Notice, the Company secured a lone grant² and otherwise eschewed any efforts to find low-cost funding alternatives. Moreover, even in the private market, the Company appears to have made no diligent effort to explore multiple financing partners, speaking only with its long-time lender and no others. And there is no representation that the Company made any effort to reach out to the Towns or work with them, as contemplated by Section 1.2.4. In short, the Notice suggests that the Company made almost no effort to find low-cost financing, failed to involve the Towns in such efforts, and did not find the best available conventional financing for Phase 2.

To be sure, the Department will scrutinize these efforts as part of any petition filed by the Company related to its Phase 2 financing. But that will occur in the future. At present, the Company is failing to take all the diligent and reasonable steps necessary to move forward to Phase 2. By dragging its feet and delaying, the Company has stalled those vital capital improvements, trying

¹ Stockbridge is concerned that, with the recent change in Federal leadership and subsequent pauses on federal funding, avenues that may have been available to the Company will now be closed to it due to its delay.

² Stockbridge understands that the Company has secured a \$350,000 grant from the United States Environmental Protection Agency.

to blame Great Barrington when the Company itself has done virtually nothing to comply with the Department's Settlement Order.

2. Better Cooperation and Transparency is Necessary

Stockbridge is also concerned about the Company's transparency and commitment to cooperation.

As already discussed, the Company did not reach out to the Towns in the preceding six months to cooperate concerning financing as Section 1.2.3 required. But the issue goes beyond just that lack of outreach. The Notice, which served as the first communication to the Department about the financing issue, was *also* the first communication of any kind to Stockbridge about the issue. It is doubtful – bordering on impossibility – that the Company did not realize its financing issues weeks, if not months, before it disclosed them. Indeed, the first communication to anyone – Department or Town – was the Notice, filed when the manganese filtration plant should have been near completion. That lack of communication is simply unacceptable.

Although it is not a matter of financing, it has also come to Stockbridge's attention that the Company has also had ongoing issues with the MassDEP about manganese issues and reporting.³ On August 5, 2024, just after the Department approved the Settlement Agreement, the Company's contractor provided a water quality sample to MassDEP that did not include required manganese analytical results. After an inquiry by MassDEP, the Company stated that a different contractor would provide those results within a week. That did not happen. Instead, it was not until

³ The Executive Office of Environmental Affairs maintains an online enforcement portal. Matters concerning the Company are available at:

<https://eeaonline.eea.state.ma.us/Portal/#!/search/enforcements/results?FacilityName=HOUSAT ONIC%20WATER%20WORKS>.

The two most recent entries in the portal (in 2024) set for the factual basis for this portion of this Response.

after further MassDEP inquiry in late September that the Company provided the results showing that the manganese analysis indicated a concentration of 0.74 mg/L, which is an exceedance of the ORSG for manganese of 0.3 mg/L under 310 Code Mass. Regs. § 22.16A(27)(c).

MassDEP issued a Penalty Assessment Notice for willful (*i.e.*, not accidental) violations of applicable regulations for \$10,205. No doubt, the “willful” label -- *i.e.*, not the result of error – attached to this violation because the Company conveniently failed to send a test result that showed higher than acceptable manganese levels but promptly sent its following monthly test result, which showed no such exceedance. In other words, it appears that the Company – at nearly the same time the Department issued its Order and approved the Settlement Agreement, attempted to avoid regulatory disclosure of its ongoing water quality issue.

Stockbridge believes that the timing of this MassDEP process, coupled with the Company’s lack of outreach to the Towns, calls into question the seriousness with which it is taking its twin obligations to correct water quality and work with stakeholders toward doing so. At the least, this issue further underscores the Company’s lack of transparency over the past six months regarding its inner workings, water quality for Housatonic Village customers, and implementation of manganese filtration to fix the problem.

3. Continued Delay Harms the Company’s Customers and Erodes Public Confidence in State Oversight

The Company’s delay matters. The reasons have already been thoroughly explored as part of the settlement. But it bears repeating: Company customers are being supplied with brown water, which the Massachusetts Department of Environmental Protection (“MassDEP”) has ordered corrected. This cannot continue. Water is a fundamental human right. The Company should be moving as swiftly as possible to fix the issue. Every day that these residents lack this basic necessity is a continued day of harm. Yet, according to the Notice, a problem that should have been solved a month ago (end of 2024) is now delayed until mid-2026. That was not the solution the Department approved of in the Settlement Agreement.

Given that the Phase 2 manganese treatment capital infrastructure was expected to be in service by the end of last year, Stockbridge believes that the Company made far too few efforts. Good faith requires more. Stockbridge strongly applauds the Great Barrington Select Board's appointment of a specialist attorney to explore the acquisition of Housatonic Water Works. However, better financing rates should not depend on the completion of this potential transaction. At a minimum, the Company should have explored other financing options other than just its long-time lender. Taking this water quality crisis seriously would have seen the Company exploring alternative lenders and working with the Towns to find other alternative funding sources.

This is an essential issue as the ratepayers will bear the cost if the Company does not seek lower-cost financing as required. Borrowing at a private rate versus a lower-cost public rate (such as from the State) would have real implications for customers' bills. By way of example only (making general assumptions and without specific, current information), an eventual note of \$12.8 million (as evidenced by the Company's ten-year capital plan) financed at 7% versus 1% results in a \$55 per month increase in the monthly rate paid by ratepayers after this work. With the built-in profit of 9.5%, Selectman White has calculated that every extra dollar on the monthly cost to ratepayers results in an extra \$1,000 in annual profit to the owners. This reality creates a perverse profit incentive, incentivizing the Company to find excuses not to find the best rate available. It is incumbent upon the DPU to disallow the Company to prioritize its profits above the interests of the ratepayers.

One thing is sure. The hearing process through which the Department ultimately approved the Settlement Agreement revealed deep public distrust of the Company and its commitment to addressing its years-long water quality issues. In its final decision and order, the Department acknowledged those frustrations and explained the problematic issues that need navigation to address ongoing problems. In particular, the Department emphasized the need to do so in the "short term" and its intent that the Settlement Agreement would operate under a quick timeframe to bring change:

Many of the issues raised by the commenters cannot be fixed overnight; however, it is our intent through the approval of the Settlement to ensure that the Company undertakes concerted efforts in the short term to improve its service quality and provide its customers with a better product.

(Order on Joint Mot. to Approve Settlement Agreement, p. 40).

The Company's filing of the Notice, at the eleventh hour before manganese filtration, should have been a reality, without any prior notice to anyone, does nothing to salve those public concerns. On the contrary, it only harms public faith and trust in the State's oversight of private water companies. The Department confronted a difficult problem when presented with the Settlement Agreement. While Stockbridge questioned that agreement, the Town did not (and still does not) question the Department's motives in improving it – *i.e.*, viewing the agreement as the best solution to a poor situation. But Phase 2 of that agreement – the one addressed to the core problem presented – is now delayed by nearly a year-and-a-half, by the Company's reckoning. If the public was skeptical about the Department's oversight, this new revelation has not helped.

CONCLUSION

As the Department aptly observed in its Settlement Order: “Reasonable service quality is the cornerstone to a good working relationship between a company and the communities that it serves.” (Order at 36, citing *Clark Shores Water Corporation*, D.P.U. 23-11, at 118 (June 24, 2024); *Aquarion Water Company of Massachusetts*, D.P.U. 11-43, at 257-261 (2012)). There is no question that the Company's customers are not receiving reasonable quality service. The Settlement Agreement, as implemented by the Settlement Order, was supposed to address that problem in a phased approach that both balanced the purported need to stabilize the Company's finances (Phase 1) against the urgent need for capital investment for manganese filtration (Phase 2). That has not happened. If the Notice is accurate, the Company happily took the Phase 1 increase and has done virtually nothing more to make Phase 2 a reality. Instead, the Company has scapegoated Great Barrington to divert attention from its inaction.

Accordingly, Stockbridge is concurrently moving for the Department to enforce the Settlement Order, both under the Department's inherent authority to enforce its orders and under its supervisory powers under G.L. c. 164, § 93 and G.L. c. 165, § 1, *et seq.*, seeking both:

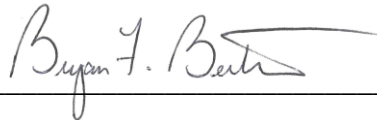
1. An investigation into the Company's efforts to comply with the Order; and
2. Suspension of the Phase 1 rate increases unless or until the Company shows compliance with the Department's July 31 Order.

The Notice makes it apparent that the Company will not move to fix its problems without external motivation. Action is necessary, and Stockbridge asks, on behalf of the Company's customers, that the Department take such action as required to end the ongoing water crisis.

Respectfully submitted,

THE TOWN OF STOCKBRIDGE,

By its attorneys,



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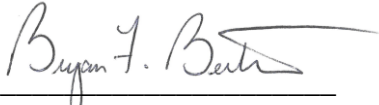
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CERTIFICATE OF SERVICE

I certify that, on February 5, 2025, I served a copy of the foregoing document on all parties in these proceedings by emailing a copy of the same, in compliance with the requirements outlined in 980 Code Mass. Regs. § 1.03.



Bryan Bertram