

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
NO.

TOWN OF GREAT BARRINGTON and
TOWN OF WEST STOCKBRIDGE,

Petitioners

v.

DEPARTMENT OF PUBLIC UTILITIES,

Respondent

PETITION FOR APPEAL

INTRODUCTION

1. On July 31, 2024, the Department of Public Utilities (the “Department”) issued a final decision in docket DPU 23-65, (the “Order”), approving the joint motion of Housatonic Water Works Company (the “Company”) and the Office of the Attorney General for approval of a settlement agreement on the Company’s petition for a general increase in rates. A copy of the Order is attached as Exhibit A.

2. The Petitioners, the Towns of Great Barrington and West Stockbridge (collectively, Towns), were full parties in interest in DPU docket 23-65. The Towns are parties in interest aggrieved by the Order because the settlement approved by the Order does not comply with the long-established rate making principles that a settlement such as that proposed be reasonable as a whole, be in the public interest, and result in just and reasonable rates. As parties aggrieved by the Order, the Towns respectfully request that the Order be set aside because it is based on errors of law, is unsupported by substantial evidence, fails to consider credible evidence

that undermines the findings and determination in the Order, is arbitrary and capricious, is an abuse of discretion, and/or is otherwise not in accordance with law.

JURISDICTION

3. The Supreme Judicial Court for Suffolk County has jurisdiction over this matter and the authority to order the relief requested pursuant to G.L. c. 25, §5.

PARTIES

4. The Petitioner Town of Great Barrington is a Massachusetts municipal corporation in Berkshire County with a principal office at 334 Main Street, Great Barrington, MA 01230.

5. The Petitioner Town of West Stockbridge is a Massachusetts municipal corporation in Berkshire County with a principal office at 21 State Line Road, West Stockbridge, MA 01266.

PROCEDURAL BACKGROUND

6. On June 23, 2023, the Company filed a petition with the Department, seeking approval of a general increase in its rates for water service to its customers (the “Petition”).

7. The Petition sought to increase the Company’s annual revenues by \$808,808, which represented a 112.70 percent increase in the Company’s total revenues.

8. The Department docketed the matter as D.P.U. No. 23-65 and suspended the effective date for the proposed rate increase to June 1, 2024 to investigate the propriety of the Company’s request.

9. On July 14, 2023, the Attorney General filed a notice of intervention pursuant to G. L. c. 12, §11E. On September 29, 2023, the Department granted full party intervention to each

of the Towns and to the Town of Stockbridge, and limited participant status to Louis James Stark.

10. The Department held a public hearing on the Petition on September 26, 2023 at Monument Mountain Regional High School in Great Barrington.

11. On December 11, 2023, the Department granted the joint motion of the Company, the Attorney General and the towns of Great Barrington, Stockbridge and West Stockbridge to modify or suspend the procedural schedule in docket 23-65 to allow for settlement negotiations among the parties. On March 11, 2024, the Department issued an order further suspending the effective date of the Company's proposed rate increase until August 1, 2024.

12. On April 26, 2024, the Company and the Attorney General filed an offer of settlement (the "Settlement") and a joint motion for approval of the Settlement, together with supporting information. The Settlement provided that it was deemed withdrawn unless the Department approved it in its entirety by August 1, 2024.

13. The Department held a remote public hearing on the Settlement, via ZOOM, on June 20, 2024.

14. On July 31, 2024, the Department issued the Order, which approved the Settlement.

15. The Settlement, as endorsed by the Order, authorizes the Company to adopt at least two rate increases, the first as of August 1, 2024, providing for an increase in revenues of 18% (\$129,153) over the prior year; and the second as of August 1, 2025, providing for an increase in revenues of 39.68% (\$336,043) over the prior year. As described in the Settlement and the Order, the increases are stated to be associated with the costs of certain capital improvements, a chlorine intake to address the presence of haloacetic acids in the water supplied

to the Company's customers for the first increase, and a manganese filtration system to address water discoloration issues, including dark-colored and yellow water (see Order at p. 38, n.17), for the second increase.

16. The Settlement also authorizes three additional increases, though subject to the approval of the towns of Great Barrington, Stockbridge and West Stockbridge, also described as associated with the costs of separate capital improvements.

LEGAL CLAIMS

17. The Order states that the Department recognizes that the magnitude of the rate increase is significant, and notes there has been long-standing public dissatisfaction with the Company's quality of service. (p. 2) Yet, the Order approves the rate increase as proposed. Thus, the Order erroneously finds that the Settlement is reasonable as a whole, is in the public interest, and will result in just and reasonable rates. Therefore, the Order a) is based on errors of law; b) is unsupported by substantial evidence; c) fails to consider credible evidence that undermines the findings and determination in the Order; d) is arbitrary and capricious; e) is an abuse of discretion; and f) is otherwise not in accordance with law.

18. The Order states the Department's acknowledgment that, over the past several years, the Company has experienced a number of serious problems related to service quality, including having been repeatedly found to be in violation of the Department of Environmental Protection's surface water treatment rules and drinking water regulations, together with non-responsiveness and rudeness to customers. (p. 2) Yet, the Order approves the rate increase as proposed. Thus, the Order erroneously finds that the Settlement is reasonable as a whole, is in the public interest, and will result in just and reasonable rates. Therefore, the Order a) is based on errors of law; b) is unsupported by substantial evidence; c) fails to consider credible evidence

that undermines the findings and determination in the Order; d) is arbitrary and capricious; e) is an abuse of discretion; and f) is otherwise not in accordance with law.

19. The Order confirms that the Settlement stipulates that each revenue increase will be allocated as equal percentage increases across all rate classes and rate elements. (pp. 9-10) This means that customers are subject to an 18% rate increase on August 1, 2024, and a 39.68% increase on top of that on August 1, 2025, a period of only 12 months, an increase of significant magnitude in the words of the Order. (p. 26) Such increases are neither reasonable as a whole nor in the public interest, and do not result in just and reasonable rates. Yet, the Order approves the rate increase as proposed, and erroneously finds that the Settlement is reasonable as a whole, is in the public interest, and will result in just and reasonable rates. Therefore, the Order a) is based on errors of law; b) is unsupported by substantial evidence; c) fails to consider credible evidence that undermines the findings and determination in the Order; d) is arbitrary and capricious; e) is an abuse of discretion; and f) is otherwise not in accordance with law.

20. The Order confirms that the Settlement specifies that the Company's return on common equity will be 9.50%. (p. 9) This means that the Settlement affords the Company a substantial return on equity, with no deferral, while at the same time requiring the Company's customers to bear the burden of a rate increase of more than 50% in a single year. Yet, the Order approves the rate increase as proposed, and erroneously finds that the Settlement is reasonable as a whole, is in the public interest, and will result in just and reasonable rates. Therefore, the Order a) is based on errors of law; b) is unsupported by substantial evidence; c) fails to consider credible evidence that undermines the findings and determination in the Order; d) is arbitrary and capricious; e) is an abuse of discretion; and f) is otherwise not in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, the Petitioners request that this Court:

1. Set aside the Department's Order, and remand the matter to the Department for reconsideration, further findings, and statement of reasons in accordance with the Court's decision.
2. Grant such other relief as the Court deems necessary and proper.

Respectfully submitted,

TOWN OF GREAT BARRINGTON

By its Attorney,

/s/ David J. Doneski
David J. Doneski
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110-1109
Tel. (617) 556-0007
Email: ddoneski@k-plaw.com

TOWN OF WEST STOCKBRIDGE

By its Attorney,

/s/ Timothy D. Zessin
Timothy D. Zessin
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110-1109
Tel. (617) 556-0007
Email: TZessin@k-plaw.com

Dated: August 20, 2024

CERTIFICATE OF SERVICE

I, David J. Doneski, hereby certify that I served the foregoing Petition for Appeal upon all parties of record or counsel for the same in accordance with 220 CMR 1.05(1), including:

William E. Martin, Esq.
WEM@martinlawofficespc.com
Martin, Oliveira & Hamel, P.C.
75 South Church Street, Suite 550
Pittsfield, MA 01201

Jed M. Nosal, Esq.
Jed.Nosal@wbd-us.com
Jesse S. Reyes, Esq.
Jesse.Reyes@wbd-us.com
Womble Bond Dickinson (US) LLP
Independence Wharf
470 Atlantic Avenue
Boston, MA 02210

Donna Brewer, Esq.
dbrewer@harringtonheep.com
Bryan W. Bertram, Esq.
bbertram@harringtonheep.com
HARRINGTON HEEP LLP
40 Grove Street, Suite 190
Wellesley, MA 02482

Timothy D. Zessin, Esq.
TZessin@k-plaw.com
KP Law, P.C.
101 Arch Street
Boston, MA 02110

Joseph W. Rogers, Esq.
joseph.rogers@mass.gov
William C. Rose, Esq.
William.Rose@mass.gov
Asst. Attorneys General
Massachusetts Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108

Louis Stark
1099 Main Street
Great Barrington, MA 01230
ljstark44@gmail.com

DATED: 8/20/24

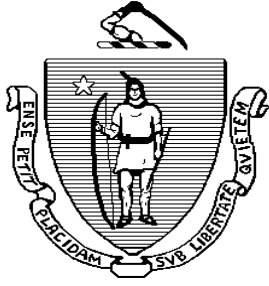


David J. Doneski

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EXHIBIT

A



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 23-65

July 31, 2024

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.

ORDER ON JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT

APPEARANCES: Jed M. Nosal, Esq.
Jesse S. Reyes, Esq.
Womble Bond Dickinson (US), LLP
Independence Wharf
470 Atlantic Avenue
Boston, Massachusetts 02210

and

William E. Martin, Esq.
Martin Law Offices
36 Cliffwood Street
Lenox, Massachusetts 01240

FOR: HOUSATONIC WATER WORKS COMPANY
Petitioner

Andrea Joy Campbell, Attorney General
Commonwealth of Massachusetts

By: Joseph W. Rogers
William C. Rose
Assistant Attorneys General

Office of Ratepayer Advocacy
One Ashburton Place
Boston, Massachusetts 02108

Intervenor

David J. Doneski, Esq.
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, Massachusetts 02110
FOR: TOWN OF GREAT BARRINGTON
Intervenor

Donna Brewer, Esq.
Bryan F. Bertram, Esq.
Miyares and Harrington LLP
40 Grove Street, Suite 190
Wellesley, Massachusetts 02482
FOR: TOWN OF STOCKBRIDGE
Intervenor

Timothy D. Zessin, Esq.
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, Massachusetts 02110
FOR: TOWN OF WEST STOCKBRIDGE
Intervenor

Louis James Stark
P.O. Box 642
Housatonic, MA 01236
Limited Participant

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SUMMARY

Housatonic Water Works Company (“Housatonic Water” or the “Company”) provides water service to customers in the village of Housatonic in Great Barrington, Stockbridge, and West Stockbridge. In response to Housatonic Water filing a petition with the Department of Public Utilities (“Department”) for approval of a general increase in rates, Housatonic Water and the Attorney General (together “Settling Parties”) filed an offer of settlement dated April 26, 2024 for Department review (“Settlement”). The Department must consider whether the Settlement as a whole is reasonable, in the public interest, and will result in just and reasonable rates.

The Settlement reduces the Company’s base distribution rate increase proposed for effect August 1, 2024, from \$808,808 to \$211,222. Pursuant to the Settlement, a rate increase of \$129,153, representing an 18 percent increase over current rates, will take effect on August 1, 2024, resulting in a deferred revenue deficiency of \$82,069. The Settlement provides for four additional conditional rate increases in phases, for a total of five potential rate increases between August 1, 2024, and August 1, 2028. A summary of the proposed rate increase, effective date, and associated capital projects is provided in the table below.

Proposed Rate Increases and Associated Capital Projects				
Phase	Date of Increase	Amount of Increase	Increase Over Prior Year	Capital Project
1	August 1, 2024	\$129,153	18.00 %	New Chlorine Intake to Address Haloacetic Acids
2	August 1, 2025	\$336,043	39.68 %	Manganese Filtration System
3	August 1, 2026	\$86,693	7.33 %	Great Barrington Fire District Interconnection
4	August 1, 2027	\$171,050	13.47 %	Water Storage Tank
5	August 1, 2028	\$180,240	12.51 %	Mains Replacements

The first rate increase includes costs related to the capital project needed to address the level of haloacetic acids in the distribution system. The Settling Parties represent that this capital project was approved by the Massachusetts Department of Environmental Protection (“DEP”), was placed in service in October 2023, and has resulted in haloacetic acid levels in compliance with federal and state guidelines over the past two quarters.

For the future capital projects, the Settling Parties stipulate that DEP has required the Company to install the Manganese Filtration System, while all other future capital projects

have been proposed by the Company. The Settlement provides that the Company will work cooperatively with the Towns to investigate the availability of grants or alternative financing to support the future capital projects. If the Company obtains lower-cost financing or grants to support the capital projects, the Settlement provides that customers will receive the benefit of such savings.

Based on our review of the record in this proceeding, the Department finds that the Settlement is consistent with Department precedent, is in the public interest, and will result in just and reasonable rates. The Settlement provides the three Towns with an important opportunity to participate on behalf of their residents and businesses in the decision making regarding whether the Company should proceed with the Great Barrington Fire District Interconnection, Water Storage Tank, and first stage of the Company's ten-year main replacement project. In addition, final recovery of the project costs will not occur until the Department has reviewed and approved these costs in future proceedings.

The Department recognizes that the magnitude of the proposed rate increase is significant. We also acknowledge that the Company has significant capital investment obligations and, therefore, must ensure that the rates are sufficient to ensure the financial viability of the Company to the benefit of its ratepayers. In doing so, the Department often faces the difficult choices that must be made in balancing the numerous concerns of utilities, the customers they serve, public officials, and other regulatory bodies with the goal of providing higher quality water and improved service at the lowest possible cost. This case is particularly challenging given the long-standing public dissatisfaction with the Company's quality of service.

The Department's approval of the Settlement is based on our expectation the Company will aggressively seek to minimize its capital project costs through grants and the use of low-cost financing programs. If the Company does not comply or the directives do not lead to continued improvements in overall service quality, the Department will consider taking remedial action.

Over the past several years, Housatonic Water has experienced a number of serious problems related to service quality. In particular, the Company has been repeatedly found in violation of DEP's surface water treatment rules and drinking water regulations. The Department received a number of public comments regarding Housatonic Water's communications with its customers, including instances of non-responsiveness and rudeness by both Company management and its attorneys. Customer service and communications of this type are unacceptable. In this regard, the Department expects that the Company will respond to customer calls within a reasonable period (e.g., within one business day for non-emergency calls in most circumstances). In addition, customers can reach the Department's Consumer Division by email at DPUConsumer.Complaints@mass.gov or by telephone at (617) 737-2836. To ensure that the Department remains appropriately informed

about the Company's compliance with water quality and safety standards, Housatonic Water shall promptly provide to the Department copies of all sanitary surveys and notices of noncompliance.

Regarding the Company's water discoloration issues, Housatonic Water represents that it conducted extensive testing to identify potential causes of water discoloration in its source of supply other than manganese concentrations. The Company opines that, based on test data and analysis by its engineers and consultants, the primary source of discoloration is the presence of manganese at Long Pond. All issues regarding the prudence of the Manganese Filtration System will be thoroughly considered in our review of the Company's 2025 compliance filing.

The Department acknowledges the deep frustration voiced by the Company's customers in this proceeding and the desire by many for the Department to facilitate the sale of Housatonic Water to Great Barrington or some other entity. While the Department must approve any sale of Housatonic Water, the Department does not have the authority to force a sale to another entity as requested by some commenters. The Company's legislative charter authorizes Great Barrington to purchase the Company, conditioned on the assent of the residents of Great Barrington by a two-thirds favorable vote at a town meeting called for that purpose, and further specifies the purchase price formula to be used. St. 1897, c. 229, § 6. Accordingly, a change of the Company's ownership must occur either in accordance with the provisions of the charter or through a voluntary sale by Housatonic Water.

I. INTRODUCTION AND PROCEDURAL HISTORY

On June 23, 2023, Housatonic Water Works Company (“Housatonic Water” or the “Company”) filed a petition with the Department of Public Utilities (“Department”) for approval of a general increase in rates pursuant to G.L. c. 164, § 94 and G.L. c. 165, § 2. The Department docketed the Company’s petition as D.P.U. 23-65. On July 26, 2023, the Department suspended the effective date of the proposed increase until June 1, 2024, to investigate the Company’s request. Housatonic Water Works Company, D.P.U. 23-65, Suspension Order (July 26, 2023). The Department last approved a general increase in rates for the Company in 2019.¹

In its initial filing, Housatonic Water sought to increase its annual revenues by \$808,808, which represents a 112.70 percent increase to the Company’s total revenues (Exh. JJM-1, at 7). The Company calculated its proposed rate increase based on its operating expenses and current revenues for the test year January 1, 2022 to December 31, 2022, adjusted for known and measurable changes through December 31, 2023 (Exh. GCW-1, at 9). The Company maintained that the requested rate increase was driven primarily by its need to finance the following current and future capital improvements to the water system at a total estimated cost of approximately \$4.5 million: (1) reconfiguration of a

¹ The Company’s prior rate increase was implemented in two phases. The first phase took effect November 1, 2016, and the second phase took effect June 1, 2019. Housatonic Water Works Company, D.P.U. 15-179-A at 12-16 (2016); D.P.U. 15-179, Stamp-Approved Compliance Filing (2016); D.P.U. 15-179, Stamp-Approved Compliance Filing (2019).

chlorine treatment feed to reduce the level of haloacetic acids (“HAA5”);² (2) installation of a filtration system to address elevated levels of manganese causing recurrent incidents of discolored water (“Manganese Filtration System”); (3) installation of a new elevated storage tank to increase water pressure needed for fire protection (“Water Storage Tank”); and (4) interconnection with the Great Barrington Fire District for system resiliency (“Fire District Interconnection”) (Exh. JJM-1, at 2; Tr. A at 16-18). In addition, the Company proposed several changes to its rules and regulations tariff (Exh. JJM-1, at 9, M.D.P.U. No. 20 (proposed)).

On July 14, 2023, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E. On September 29, 2023, the Department granted full-party intervention to the Town of Great Barrington (“Great Barrington”), the Town of Stockbridge (“Stockbridge”), the Town of West Stockbridge (“West Stockbridge”) (collectively, “Towns”), and limited participant status to Louis James Stark. Pursuant to notice duly issued, the Department held a public hearing at Monument Mountain Regional High School in Great Barrington on September 26, 2023.

In support of its filing, Housatonic Water submitted the testimony of James J. Mercer, the Company’s treasurer, and Gary C. White, a rate consultant. Great Barrington submitted

² HAA5 are chlorinated disinfection byproducts that form when chlorine reacts with natural organic matter in water (Exh. DPU 1-6, Att., pt. 2, at 33). People who drink water containing HAA5 in excess of maximum contaminant levels over many years may experience an increased cancer risk (Exh. DPU 1-6, Att., pt. 2, at 33).

the testimony of its town manager, Mark Pruhenski. Stockbridge submitted the testimony of Patrick White, a member of its select board. West Stockbridge submitted the testimony of Kathleen Keresey, chair of its select board. The evidentiary record includes approximately 148 exhibits.³

On December 11, 2023, the Department granted a revised joint motion by the Company, the Attorney General, and the Towns to modify or suspend the procedural schedule to allow for settlement negotiations among the parties. D.P.U. 23-65, Stamp-Granted Motion (December 11, 2023).⁴ On March 11, 2024, the Department issued an Order further suspending the effective date of the Company's proposed tariffs until August

³ On its own motion, the Department moves into the evidentiary record of this proceeding the Company's testimony and supporting exhibits (Exh. JJM-1, GCW-1, Water Rate Study, Schedules A-1 through F-3), Great Barrington's testimony (Exh. GRBA-MP-1), Stockbridge's testimony (Exh. STB-PW-1), West Stockbridge's testimony (Exh. WSTK-KK-1), the Settlement and supporting documentation (Settlement, Schedules 1 through 4, and Exhs. HWWC-1, HWWC-2, HWWC-3), and the Company's responses to information requests and any revised and supplemental responses to information requests (Exhs. DPU 1-1 through DPU 1-38, DPU 2-1 through DPU 2-15, DPU 3-1 through DPU 3-16, DPU 4-1 through DPU 4-8, DPU 5-1 through DPU 5-16, DPU-SP 1-1 through DPU-SP 1-3, DPU-SP 2-1 through DPU-SP 2-7, DPU-SP 3-1, AG 1-1 through AG 1-16, AG 2-1 through AG 2-6, GB 1-1 through GB 1-4, STB 1-1 through STB 1-8, STB 2-1).

⁴ The revised joint motion stated that, to effectuate the stay, the Company would refile proposed tariffs with an effective date of June 1, 2024, cancelling the tariffs previously submitted in its petition (M.D.P.U. No. 19 (proposed) and M.D.P.U. No. 20 (proposed)), to enable the Department to extend the Suspension Order (Revised Joint Motion to Modify or Suspend Evidentiary Hearing Schedule at 1-2 (December 11, 2023)). On January 16, 2024, the Company filed tariffs M.D.P.U. No. 21 (proposed), cancelling M.D.P.U. No. 19 (proposed), and M.D.P.U. No. 22 (proposed), cancelling M.D.P.U. No. 20 (proposed).

1, 2024. Housatonic Water Works Company, D.P.U. 23-65, Suspension Order (March 11, 2024).

On April 26, 2024, Housatonic Water and the Attorney General (together “Settling Parties”) filed the following documents with the intent to resolve all issues in D.P.U. 23-65: (1) an executed offer of settlement (“Settlement”); (2) a joint motion for approval of the Settlement (“Joint Motion”); and (3) four supporting schedules, including an explanatory statement (“Explanatory Statement”). The Settling Parties request that the Department find: (1) the terms of the Settlement are reasonable and in the public interest; and (2) implementation of the Settlement will result in just and reasonable rates (Joint Motion at 1-2). The Settlement is deemed withdrawn unless the Department approves it in its entirety by August 1, 2024 (Settlement at § 2.6).

On May 30, 2024, Stockbridge and West Stockbridge filed comments on the Settlement. On June 6, 2024, Housatonic Water filed reply comments on the Settlement. Pursuant to notice duly issued, the Department held a virtual hearing on June 20, 2024, to receive public comments on the Settlement. Several members of the public provided comments on the Settlement at the hearing. In addition, the Settling Parties, Stockbridge, West Stockbridge, Great Barrington, and Louis James Stark provided comments on the Settlement at the hearing (Tr. B at 12-57).

Below, the Department considers whether the Settlement is reasonable, in the public interest, and will result in just and reasonable rates. In addition, the Department addresses a number of important customer service-related issues raised by commenters.

II. BACKGROUND

Housatonic Water is an investor-owned Massachusetts corporation that currently provides water service to 757 customers in the village of Housatonic in Great Barrington, 23 customers in Stockbridge, and 67 customers in West Stockbridge (Exhs. JJM-1, at 1-2; DPU 5-16). On April 2, 1897, the Legislature incorporated Housatonic Water for the purpose of furnishing the village of Housatonic with water for “the extinguishment of fires and for domestic and other purposes” An Act to Incorporate the Housatonic Water Works Company, St. 1897, c. 229.⁵ The current owners acquired the Company in 1984 (Exh. DPU 5-16).

The Company’s source of supply is surface water from Long Pond in Great Barrington (Exh. JJM-1, at 2). In 2022, the Company’s total annual water production was 40,274,527 gallons (Exh. JJM-1, at 2). Water from Long Pond flows by gravity into a slow sand filtration system, which the Company then treats with chlorine and pumps into a one-million-gallon storage tank (Exhs. JJM-1, at 2; DPU 5-16). Housatonic Water’s distribution system consists of approximately 16.6 miles of water mains (Exhs. JJM-1, at 2; DPU 5-16).

⁵ In the late 19th and early 20th centuries, the Legislature incorporated water companies by Special Act. See Milford Water Company, D.P.U. 18-60 (2021) (discussing the valuation standards governing municipal acquisitions of water companies chartered during that period).

III. SETTLEMENT

A. Description of Proposed Settlement

1. Overview

The Settlement reduces the Company's base distribution rate increase proposed for effect August 1, 2024, from \$808,808 to \$211,222. Pursuant to the Settlement, the Company's revenue requirement on August 1, 2024 will be \$928,882, an increase of \$211,222 (or 29.43 percent) over current rates (Settlement at § 1.1.2). The Company's base distribution rate increase will be deferred, in part, and implemented in phases (see Section III.A.3). As described further below, the Settlement provides for four additional conditional rate increases in phases, for a total of five potential rate increases between August 1, 2024 and August 1, 2028 (Settlement at §§ 1.1.1, 1.3). Further, the Settlement specifies that the Company's return on common equity for accounting and other relevant purposes will be 9.50 percent (Settlement at § 1.1.6).

The capital improvement projects described in Settlement at § 1.2.5 (i.e., the Manganese Filtration System, Fire District Interconnection, Water Storage Tank, and the first phase of the Company's ten-year mains replacement project ("Capital Project List")) will not be eligible for inclusion in the Company's rate base until they have been placed in service (Settlement at § 1.1.3). Rate recovery will be in phases and subject to the provisions of the Settlement, including a prudence review (Settlement at § 1.1.3). The incremental cost of service attributable to projects on the Capital Project List may be deferred, in part, for future recovery (Settlement at § 1.1.3). The Settlement stipulates that each revenue increase will be

allocated as equal percentage increases across all rate classes and rate elements, and the carrying cost of any deferral will be calculated monthly based on the prime rate published in the Wall Street Journal (Settlement at §§ 1.1.4, 1.1.5).

The Settlement contains the following proposed or exemplar tariffs:

(1) M.D.P.U. No. 23, Schedule of Water Rates (proposed) incorporating the rates agreed to in the Settlement for effect August 1, 2024; (2) M.D.P.U. No. 24, Rules and Regulations (proposed), incorporating additional terms; and (3) M.D.P.U. No. 25 (exemplar) showing the rates agreed to in the Settlement for effect August 1, 2025 (Settlement at § 1.1.7). The Settling Parties maintain that the rate structure set forth in M.D.P.U. No. 23 (proposed) for effect August 1, 2024, will produce just and reasonable rates and that the rate design is consistent with the Department's ratemaking principles of efficiency, simplicity, fairness, rate continuity, and earnings stability (Settlement at § 1.1.8). The Settling Parties further maintain that the revised rules and regulations contained in M.D.P.U. No. 24 (proposed) are reasonable (Settlement at §§ 1.1.9, 1.1.10). Finally, the Settling Parties maintain that, subject to the Department's future approval, the rate structure set forth shown in M.D.P.U. No. 25 (exemplar) for effect August 1, 2025, will produce just and reasonable rates (Settlement at § 1.1.10).

2. Future Capital Projects

The Settling Parties stipulate that the Massachusetts Department of Environmental Protection ("DEP") has required the Company to install the Manganese Filtration System, while all other projects on the Capital Project List have been proposed by the Company

(Settlement at § 1.2.1).⁶ The Settlement provides that if the in-service date for any capital project is delayed beyond the effective date of the applicable rate recovery phase, the new effective date will be on the first day of the month following the date the project is placed in service (Settlement at § 1.2.1). Further, the Settlement provides that the scheduled revenue increases attributable to projects on the Capital Project List represent the maximum revenue increases to be recovered in each phase, subject to a Department prudence review and reconciliation of the actual incremental revenue requirement (Settlement at § 1.2.1). For all projects on the Capital Projects List, the Settlement allows the Company to recover: (1) the associated revenue requirement, including depreciation and a return on net investment, after any grants or other outside funding (net of accumulated depreciation and accumulated deferred income taxes) and taxes; and (2) all prudently incurred incremental operations and maintenance costs (Settlement at § 1.2.1).

After a capital project is placed in service, the Company must submit a compliance filing (including revised tariffs) to the Department with sufficient documentation and workpapers to allow for verification of the actual incremental costs attributable to the project (Settlement at § 1.2.2). If the Department subsequently finds that the sum of the prudently incurred incremental costs attributable to the project and any rate deferrals from prior phases is less than the scheduled revenue increase for the applicable phase, then the scheduled revenue increase will be reduced and any over recovery will be returned to customers with

⁶ The completed HAA5 project was also approved by DEP (Settlement at § 1.3.1; Explanatory Statement, at 3 n.2).

interest at the prime rate (Settlement at § 1.2.2). If the sum of the prudently incurred incremental costs attributable to the project exceeds the scheduled revenue increase for the applicable phase, any overage will be addressed in the Company's next base distribution rate proceeding (Settlement at § 1.2.2).

Pursuant to the Settlement, the Company must file all required financing petitions with the Department as soon as practicable to ensure that any long-term debt financing is in place to support the construction schedules proposed in the Capital Project List (Settlement at § 1.2.3). Further, the Settlement provides that the Company will work cooperatively with the Towns to investigate the availability of grants or alternative financing to support the capital projects. If the Company obtains lower-cost financing or grants to support the capital projects, the Settlement provides that customers will receive the benefit of such savings, which will be incorporated as adjustments in the Company's compliance filings (Settlement at § 1.2.4).

3. Settlement Phases

The Settlement provides that the total revenue requirement for effect August 1, 2024 is \$928,882 (Settlement at § 1.3.1). Pursuant to the Settlement, a rate increase of \$129,153, representing an 18 percent increase over current rates, will take effect on August 1, 2024, resulting in a deferred revenue deficiency of \$82,069 ("Phase 1") (Settlement at § 1.3.1). The Phase 1 rate increase includes costs related to the capital project needed to address the level of HAA5 in the distribution system (Explanatory Statement at 3 n.2). The Settling Parties maintain that this DEP-approved project was placed in service in October 2023 and

has resulted in HAA5 levels in compliance with federal and state guidelines over the past two quarters (Explanatory Statement at 3 n.2).

The Settlement provides that, subject to certain conditions, the second rate increase will take effect on August 1, 2025 (“Phase 2”) (Settlement at § 1.3.2). This rate increase will not exceed \$336,043, representing a 39.68 percent increase over Phase 1 rates, for a total revenue requirement in Phase 2 not to exceed \$1,212,849 (Settlement at § 1.3.2). The Phase 2 rate increase is designed to recover costs attributable to the Manganese Filtration System project, which is expected to be in service in the fourth quarter of 2024 (Settlement at § 1.2.5.1).

The Settlement provides that, subject to certain conditions, the third rate increase will take effect on August 1, 2026 (“Phase 3”) (Settlement at § 1.3.3). This rate increase will not exceed \$86,693, representing a 7.33 percent increase over Phase 2 rates, for a total revenue requirement in Phase 3 not to exceed \$1,269,549 (Settlement at § 1.3.3). The Phase 3 rate increase is designed to recover costs attributable to the Fire District Interconnection, which currently is projected to be in service in the third quarter of 2025 (Settlement at § 1.2.5.2).

Prior to commencing the Fire District Interconnection project and no later than January 1, 2025, the Company must provide the Towns with updated estimates of the costs associated with the project and the expected incremental revenue requirement (Settlement at § 1.2.5.2). After review of the updated estimates, the Towns will have the option to decide whether the Company should proceed with the project or not (Settlement at § 1.2.5.2).

The Towns must provide the Company with a written notice to proceed on or before February 1, 2025 (Settlement at § 1.2.5.2). If the Towns do not provide a notice to proceed by this date, the Settlement will terminate on August 1, 2026, unless the Towns and the Company agree in writing to extend the deadlines (Settlement at § 1.2.5.2).

The Settlement provides that, subject to certain conditions, the fourth rate increase will take effect on August 1, 2027 (“Phase 4”) (Settlement at § 1.3.4). This rate increase will not exceed \$171,050, representing a 13.47 percent increase over Phase 3 rates, for a total revenue requirement in Phase 4 not to exceed \$1,440,599 (Settlement at § 1.3.4). The Phase 4 rate increase is designed to recover costs attributable to the Water Storage Tank project, which is currently projected to be in service in the fourth quarter of 2025 (Settlement at § 1.2.5.3). Similar to Phase 3, the Settlement provides that prior to commencing this project and no later than January 1, 2025, the Company must provide the Towns with updated project cost estimates and the expected incremental revenue requirement (Settlement at § 1.2.5.3). The Towns must provide the Company with a written notice to proceed no later than February 1, 2025 (Settlement at § 1.2.5.3). If the Towns do not provide the Company with a notice to proceed by this date, the Settlement will terminate on August 1, 2026, unless the Towns and the Company agree in writing to extend any deadlines (Settlement at § 1.2.5.3).

The Settlement provides that, subject to certain conditions, the fifth and final rate increase will take effect on August 1, 2028 (“Phase 5”) (Settlement at § 1.3.5). This rate increase will not exceed \$180,240, representing a 12.51 percent increase over Phase 4 rates,

for a total revenue requirement in Phase 5 not to exceed \$1,620,839 (Settlement at § 1.3.5).

The Phase 5 rate increase is designed to recover costs attributable to the first stage of a ten-year mains replacement project, currently expected to be in service in the first quarter of 2027 (Settlement at § 1.2.5.4). Similar to Phases 3 and 4, the Company must provide the Towns with updated project cost estimates and the expected incremental revenue requirement no later than January 1, 2025 (Settlement at § 1.2.5.4). The Towns must provide the Company with a written notice to proceed no later than February 1, 2025 (Settlement at § 1.2.5.4).

4. Stay-Out Provision

Other than the required compliance filings and reports submitted under Section 1.2.2, the Settlement provides that the Company shall not make any filing with the Department that would have the effect of increasing rates with an effective date prior to August 1, 2028, unless the Settlement has terminated pursuant to Sections 1.2.5.2, 1.2.5.3, or 1.2.5.4 (Settlement at § 1.4). If the Settlement has terminated, the Company shall not make any filing that would have the effect of increasing rates with an effective date prior to August 1, 2026 (Settlement at § 1.4).

5. Settlement Conditions

The Settlement contains a number of conditions. In particular, the provisions of the Settlement are not severable, and the Settlement is conditioned on its approval in full by the Department (Settlement at §§ 2.4, 2.5). If the Department does not approve the Settlement in its entirety by August 1, 2024, the Settlement is deemed withdrawn, and it shall not

constitute a part of the record in any proceeding or be used for any other purpose (Settlement at § 2.6). Additionally, the Settlement provides that the Department will have continued jurisdiction to enforce its terms, and nothing in the Settlement shall be construed to prevent the Attorney General from pursuing any course of action related to this Settlement in court under G.L. c. 93A or otherwise (Settlement at § 2.7).

Further, the Settlement provides that the Company shall not be permitted to recover costs through any charge or tariff under this Settlement more than once, and any such collection(s) shall be fully refunded with interest, as soon as reasonably possible (Settlement at § 2.8). The Settlement does not interfere with the Attorney General's rights to petition the Department under G.L. c. 164, § 93, or otherwise under law or regulation, for a review of the Company for any reason (Settlement at § 2.9). Finally, the Settlement shall be effective upon approval by the Department, regardless of any pending appeals or motions for reconsideration, clarification, or recalculation (Settlement at § 2.10).

B. Summary of Public Comments

Numerous commenters objected to the proposed rate increases incorporated in the Settlement, arguing that they are unaffordable, particularly for fixed- and low-income customers (see, e.g., Tr. A at 29; Tr. B at 59-61, 67, 72, 76; Martin Comments (June 29, 2023); Moore Comments (September 20, 2023)). In this regard, several commenters noted that they are already burdened by the cost of filtration systems and alternative water supplies that they maintain are necessary to address water quality concerns (see, e.g., Tr. A at 66, 72-73; Koval Comments (July 11, 2023); Larkin Comments (August 9, 2023)). In addition,

a number of commenters that operate businesses and nonprofits expressed concern that the proposed rate increases would restrict their ability to provide services (see, e.g., Tr. A, at 72-73; Bosco Baumann Comments (August 15, 2023); Berkshire Meadows Comments (September 25, 2023)). Finally, several commenters argued that the Company should be required to pursue other sources of funding to address capital projects, such as state and federal grant funding (see, e.g., Tr. A at 47, 49, 69).

C. Positions of the Parties

1. West Stockbridge

West Stockbridge has serious concerns about the Settlement and argues that it will result in significant cost increases for the West Stockbridge residents who receive water from the Company (West Stockbridge Comments at 1). West Stockbridge argues that these customers have been improperly forced to pay for discolored water that cannot be safely consumed or used for household purposes (West Stockbridge Comments at 1). West Stockbridge accepts that the Company's water system needs capital improvements but argues that requiring customers to bear the entire financial burden of these improvements over a short period of time is unreasonable and fails to hold the Company accountable for the postponed maintenance of aging infrastructure (West Stockbridge Comments at 2). West Stockbridge argues that the Department should require the Company to pursue grants and/or low-interest loans to fund any necessary capital improvements (West Stockbridge Comments at 2). In addition, West Stockbridge suggests that the Department should require Housatonic

Water to sell the Company to a purchaser that could more responsibly serve the public interest (West Stockbridge Comments at 2).

2. Stockbridge

While Stockbridge asserts that the Settlement appears to launch Housatonic Water in a better direction, it argues that more actions are needed by the Company to serve the public interest (Stockbridge Comments at 2). In addition, Stockbridge argues that the rate increases incorporated in the proposed Settlement would impose significant financial stress on the Company's ratepayers (Stockbridge Comments at 5). Stockbridge explains that its residents' median income is below the state median income and, therefore, the rate increases allowed by the Settlement would strain residents' and businesses' already stretched resources (Stockbridge Comments at 5).

Stockbridge objects to the rate of return on common equity proposed in the Settlement (Stockbridge Comments at 6). According to Stockbridge, a return on common equity of 9.50 percent is not reasonable because Housatonic Water is not a well-managed company (Stockbridge Comments at 6). Stockbridge maintains that the proposed rate increases in this proceeding are designed to address the Company's persistent underinvestment in capital infrastructure and its delivery of water tainted by manganese and HAA5 (Stockbridge Comments at 7). Therefore, Stockbridge asserts that the Department should approve a lower return on common equity for the Company to send a signal to all private water companies that they are responsible for appropriately managing their affairs (Stockbridge Comments at 8). Specifically, Stockbridge maintains that the Department should authorize a four

percent rate of return until such time as the Company adequately addresses all water quality issues (Stockbridge Comments at 12).

In addition, Stockbridge argues that the Company did not research or apply for any grant funding prior to filing its petition for a rate increase and argues that the Department should require the Company to fully explore available financing for capital improvements before approving the Settlement (Stockbridge Comments at 8-11). Stockbridge suggests that low-interest financing and grants have the potential to reduce the ratepayer cost of the capital projects needed to improve water quality (Stockbridge Comments at 11).

Further, Stockbridge proposes that the Department require that the Company undergo a more stringent independent, third-party review of the efficacy of its planned technology deployments to improve water quality (Stockbridge Comments at 11). Finally, Stockbridge avers that it is necessary for stakeholders to discuss a longer-term vision of Housatonic Water's operations and how the Company can viably supply quality water to its customers at rates that are reasonable and comparable to other consumers in the Commonwealth (Stockbridge Comments at 12).

3. Great Barrington

Great Barrington does not endorse the proposed Settlement for several reasons (Tr. B at 30-31). First, Great Barrington asserts that the water quality and level of service provided to the residents of Housatonic have been constant topics of concern including: (1) questions about whether the water complies with DEP water quality requirements; (2) questions about whether the water is safe to drink; and (3) damage caused by discolored water to home

appliances, such as washing machines and dishwashers (Tr. B at 30-31). Moreover, Great Barrington claims that the Company's meter reading system does not properly transmit water usage data (Tr. B at 31). In addition, Great Barrington argues that there is insufficient water pressure in hydrants designated for firefighting purposes (Tr. B at 31). To address these issues, Great Barrington recommends that any rate increase should be contingent on the following requirements: (1) the Company should complete all infrastructure identified as reason for the rate increase; (2) the Department and DEP should coordinate to monitor any infrastructure installation program; (3) any rate increases related to the Manganese Filtration System or other capital improvements should not go into effect until the Company has demonstrated, with verification by DEP, that the improvement is performing as specified; and (4) water delivered to customers should meet all safety and quality requirements (Tr. B at 38-39).

Great Barrington also argues that any rate increases should be calculated based on the actual cost of completed capital improvements and phased in over a longer period of time, which will allow customers to adjust to the added costs (Tr. B at 39-40). In addition, Great Barrington maintains that the Department should exercise its authority to specify a lower rate of return for the Company than the 9.50 percent return included in the Settlement (Tr. B at 41). Finally, Great Barrington asserts that the Department should require the Company to provide a written report documenting its pursuit of capital funding from non-ratepayer provided sources (Tr. B at 41-42).

4. Louis James Stark

Louis James Stark objects to the Settlement and avers that ratepayers should not be expected to fund the Company's mistakes (Stark Comments (June 21, 2024)). Louis James Stark further asserts that the publicly available information regarding the Settlement is inconsistent, which makes it difficult for him to understand the intent of the Settling Parties (Stark Comments (June 21, 2024)). In addition, Louis James Stark argues that the Company has not demonstrated that manganese alone is responsible for discolored water and that the Company has failed to adequately consider the possible role of service pipes as a cause of the discoloration (Stark Comments (June 21, 2024)). Finally, Louis James Stark claims that the Company has installed a grossly oversized water tank and has failed to explain why the previous water tank or pumping station were taken out of service (Stark Comments (June 21, 2024)).

5. Company

Housatonic Water argues that the Department should approve the proposed Settlement because it is consistent with Department precedent, is in the public interest, and will result in just and reasonable rates (Company Reply Comments at 1). The Company asserts that its rates have not increased since November 2017; however, its cost of service has increased significantly during this period (Company Reply Comments at 1). Housatonic Water maintains that it is mindful that the cost of the proposed capital projects will be significant in comparison to the size of its customer base and current rate base but notes that no party has disputed the need for the major capital improvement projects on its proposed Capital Project

List (Company Reply Comments at 2). The Company asserts that, contrary to allegations of Stockbridge and West Stockbridge, the need for the proposed capital projects is not the result of the Company's neglect of periodic maintenance (Company Reply Comments at 2, citing Stockbridge Comments at 14; West Stockbridge Comments at 2). Rather, the Company argues that the Manganese Filtration System project has been the subject of solution studies starting in 2020, including pilot testing of the proposed filtration technology and approval by DEP (Company Reply Comments at 2, citing Exhs. AG 1-7; DPU 1-8, Att.; DPU 1-10; GB 1-4-3, Att. at 2-3; DPU 5-1). The Company further maintains that the other projects on the Capital Project List are part of its ten-year system improvement plan (Company Reply Comments at 3, citing Exh. DPU 1-13). The Company indicates that the Settlement appropriately addresses its current revenue deficiency and establishes a schedule for the necessary, near-term capital improvements, spreading the cost recovery for these projects over five phases (Company Reply Comments at 3).

Housatonic Water argues that it has researched and applied for public financing and grant funding for its capital projects through various channels, including DEP, the Rural Community Assistance Partnership, and the Massachusetts Rural Water Association (Company Reply Comments at 4-5). The Company maintains that it often found it was not eligible for such funding, either as a privately-owned water company or because additional study was required to support the projects (Company Reply Comments at 4-5, citing Exh. STB 2-1). Moreover, the Company asserts that the majority of financial assistance being awarded to water utilities has been for per- and polyfluoroalkyl substances ("PFAS")

remediation⁷ and, consequently, there is no funding available for other projects such as the HAA5 treatment project (Company Reply Comments at 5). Nonetheless, the Company asserts that it has a grant application in process for the Manganese Filtration System and, if the grant is confirmed, the grant funds will be incorporated to offset the rate increase in its Phase 2 compliance filing (Company Reply Comments at 5). Further, the Company maintains that it 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 (Company Reply Comments at 5, citing Exh. HWWC-3).

Contrary to the Towns' assertions, the Company argues that the Manganese Filtration System has been studied and tested extensively (Company Reply Comments at 6). The Company asserts that it has explored alternative solutions to address the manganese issue, including a complete replacement of the existing sand filters with a new high-tech filtration system. The Company maintains that this latter option was found to be unsuitable because the facility would not be connected to the town sewer (Company Reply Comments at 6, citing Exhs. DPU 1-8, Att.; DPU 5-5). According to the Company, the proposed Manganese Filtration System offers the most cost-effective solution in consideration of Housatonic Water's existing plant (Company Reply Comments at 6, citing Exhs. DPU 1-9,

⁷ According to the U.S. Environmental Protection Agency, PFAS are a group of manufactured chemicals that have been used in industry and consumer products since the 1940s. These chemicals may break down very slowly such that they can build up in people, animals, and the environment over time (<https://www.epa.gov/pfas/pfas-explained>).

Atts. (a) through (c); HWWC-1). The Company further maintains that on March 25, 2024, DEP approved a pilot study report showing that the proposed Manganese Filtration System demonstrated consistent and effective removal of manganese (Company Reply Comments at 6, citing Exh. HWWC-2). The Company argues that the Department should defer to DEP's approval of this technology and the proposed solution does not require additional review by the Department (Company Reply Comments at 6).

Housatonic Water argues that a four percent rate of return as suggested by Stockbridge would be below the Company's cost of debt and amount to an unconstitutional taking (Company Reply Comments at 7, citing Stockbridge Comments at 12). The Company asserts that a return on equity of 9.50 percent is reasonable in the context of the Settlement and remains below the optional return on equity for water companies established by Department regulation (Company Reply Comments at 7, citing 220 CMR 31.03).

The Company agrees with commenters that it has an obligation to provide its customers with drinking water of acceptable quality (Company Reply Comments at 7). Housatonic Water argues, however, that it cannot achieve this obligation if the Department disallows its proposed base distribution rate increase and the costs of the necessary capital improvements (Company Reply Comments at 7). The Company maintains that Stockbridge's request that the Company be required to engage in longer-term planning is not inconsistent with the Settlement, which incorporates a five-year capital investment schedule as part of Housatonic Water's long-term capital investment plan (Company Reply Comments at 7).

The Company disputes West Stockbridge's assertion that it deferred maintenance of its infrastructure and, instead, argues that it has made needed capital investments since its last rate case (Company Reply Comments at 8, citing Exh. DPU 1-15). The Company avers that it is committed to pursuing lower-cost financing and grants to support its capital projects and, if the Department approves the Settlement, its financing efforts for those projects would be subject to a Department prudence review (Company Reply Comments at 8). Further, the Company argues that while the Department may have jurisdiction to review the sale of the Company to a private entity, it does not have jurisdiction to direct Housatonic Water to sell the Company as suggested by West Stockbridge (Company Reply Comments at 8).

D. Standard of Review

Generally, to approve a settlement, the Department must find that the settlement offer is complete, acceptable, and results in just and reasonable rates. Barnstable Water Company, D.P.U. 90-87, at 3 (1990). In assessing the reasonableness of the settlement and the revenue increased reflected in it, the Department must review the entire record, including the Company's filing and other record evidence, to ensure that the settlement is consistent with the public interest. Plymouth Water Company, D.P.U. 91-254, at 4 (1992); Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Cambridge Electric Light Company, D.P.U. 89-109, at 5 (1989); Southbridge Water Supply Company, D.P.U. 89-25 (1989); East Edison Company, D.P.U. 88-100, at 9 (1989).

E. Analysis and Findings

The Department has reviewed the Settlement in light of the information submitted by the Company in its initial filing regarding its revenue requirement, as well as the Company's responses to information requests, the testimony and briefs, and the public comments. In particular, the Department has fully evaluated the proposed revenue increase in light of the information included with the Settlement concerning the appropriate revenue requirement of the Company, its test year revenues and expenses, and capital additions. Further, the Department has reviewed the other aspects of the Settlement, including the proposed changes to the Company's rules and regulations. The Department gives considerable weight to the fact that the Attorney General, given her broad common law and statutory powers to represent the public interest, is a proponent of the Settlement.

The Department is mindful of the burdens associated with higher bills. In the instant case, the Department recognizes that the magnitude of the proposed rate increase is significant. We also acknowledge that the Company has significant capital investment obligations and, therefore, must ensure that the rates we approve today are sufficient to ensure the financial viability of the Company to the benefit of its ratepayers. In doing so, the Department often faces the difficult choices that must be made in balancing the numerous concerns of utilities, the customers they serve, public officials, and other regulatory bodies with the goal of providing higher quality water and improved service at the lowest possible cost. This case is particularly challenging given the long-standing public dissatisfaction with the quality of service provided by the Company.

Based on our review of the record in this proceeding, the Department finds that the Settlement is consistent with Department precedent, is in the public interest, and will result in just and reasonable rates. Taken as a whole, the Settlement provides for a level of additional revenues that is consistent with findings that might reasonably have been made by the Department and, therefore, is consistent with the public interest. Plymouth Water Company, D.P.U. 91-254, at 4 (1992). In particular, we find that the Phase 1 rate increase of \$129,153 for effect August 1, 2024, and the maximum Phase 2 rate increase of \$336,043 for effect August 1, 2025, would likely be no higher than the increases that would result from litigation of the underlying rate case (see, e.g., Exhs. DPU 1-12; DPU 1-14; DPU 1-19; DPU 1-22; DPU 1-28; DPU 1-30; DPU 1-32; DPU 1-33; DPU 1-34; DPU 2-12; DPU 2-13; DPU 3-10; AG 1-8; AG 1-9; AG 1-10; AG 1-11, AG 1-12; AG 2-2; AG 2-3.). In addition, the Settlement avoids additional rate case litigation expense that would increase costs to the Company's customers. Further, the Department finds that the Settlement includes a rate structure that appropriately balances the often-competing goals of efficiency, simplicity, rate continuity, fairness, and earnings stability. Bay State Gas Company, D.P.U. 95-104, at 15 (1995; Milford Water Company, D.T.E. 98-112, at 4 (1999); Whitinsville Water Company, D.P.U. 96-111, at 6 (1997).

The Department finds that the Settlement contains other provisions that benefit the Company's customers. The deferral provisions associated with the Phase 1 and 2 rate increases will serve to ameliorate the short-term rate impacts on customers (Settlement at §§ 1.1.2, 1.3.1, 1.3.2). Further, the Settlement provides the Towns with an important

opportunity to participate on behalf of their residents and businesses in the decision making regarding whether the Company should proceed with the contemplated Phase 3 through Phase 5 capital improvements (Exh. DPU-SP 2-1). In particular, Great Barrington, Stockbridge, and West Stockbridge each must provide the Company with a written notice to proceed with the Fire District Interconnection, the Water Storage Tank, and the first phase of the Company's ten-year mains replacement project or the Settlement will terminate on August 1, 2026, unless the Towns and the Company mutually agree to extend any of these deadlines (Settlement at §§ 1.2.5.2, 1.2.5.3, 1.2.5.4). In addition, final recovery of the project costs will not occur until the Department has reviewed and approved these costs in future proceedings. The prudence of these capital projects, including the Manganese Filtration System, will be examined in these subsequent proceedings.

Base distribution rates typically are not approved subject to reconciliation. Our approval of the Settlement is based on our interpretation of the term "reconciliation," as used in the Settlement, to mean that in the event the Department allows the proposed Phase 2, Phase 3, Phase 4, or Phase 5 rate increases to go into effect subject to further investigation and reconciliation and subsequently disallows any costs included in said rate increases, then an amount equal to the disallowed costs plus interest at the prime rate shall be credited to Housatonic Water's customers in a manner to be determined by the Department (Exh. DPU-SP 2-4).⁸ Although the Department accepts the process as described above as a

⁸ The Company will not be permitted to reconcile any over- or under-recovery of its target revenue requirement with its actual sales for the prior year.

negotiated term of the Settlement, any need to credit costs to customers should be avoided.

Accordingly, the Company shall provide the Attorney General and the three Towns with copies of the compliance filings and supporting documentation well in advance of submission to the Department.⁹ Further, 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.

The Settlement clarifies the rights of customers served through privately-owned mains connected to the Company's distribution system (M.D.P.U. No. 24, ¶ 8 (proposed)).¹⁰ Housatonic Water's practice of allowing privately-owned mains is long-standing, rooted in the development of farmland during the mid-20th century (Exh. DPU 2-4). While this practice facilitated the extension of water service to new homes without the need to secure

⁹ Prior to submitting its compliance filings to the Department, the Company shall meet with the Attorney General and the Towns to address any questions or issues these parties may have with the compliance filings. The Company shall document its efforts to resolve any issues raised by the parties as part of its compliance filings.

¹⁰ Privately owned mains are located in Great Barrington on Brookside Court, Crimson Lane, Grant Lane, Nolan Drive, Rachael's Way, Ramsdell Road, Spruce Street, Walnut Street, and Wright Lane (Exh. DPU 2-3). However, Housatonic Water's Rules and Regulations tariff, M.D.P.U. No. 24, § 8 (proposed), does not indicate which streets in the service territory have mains that are privately owned. Within seven days of the date of this Order, the Company shall file a revised Rules and Regulations tariff identifying all streets in the service territory that have privately owned mains subject to the tariff provision. The Company shall number this tariff as "M.D.P.U. No. 24" with an effective date August 1, 2024. Housatonic Water also shall change the "issued date" to the date the Company files its revised tariff with the Department and amend the cover sheet to indicate that M.D.P.U. No. 24 is cancelling M.D.P.U. No. 14.

rights-of-way along private ways, DEP has found that the water quality in these mains is frequently poor and difficult to address because the Company is not able to flush the privately-owned, dead-end mains (Exhs. DPU 1-3, Att., pt. 1, at 1; DPU 1-4, Att. at 32). The poor water quality in the privately-owned mains also has the potential to affect the water quality in the entire system through the dislodgement and infusion of inorganic matter during hydraulic events such as main breaks (Exh. DPU 1-3, pt. 1 at 2). See also Aquarion Water Company of Massachusetts, D.P.U. 09-48, at 20 (2012). The customers living on those affected roads may not have been aware of their obligation to maintain the privately-owned mains until they were notified by the Company in December 2021 pursuant to an Administrative Consent Order (“ACO”) with DEP (Exh. DPU 5-14, Atts. 1, 2).

Prior to its next base distribution rate case, the Company shall conduct an analysis of potential solutions to improve the water quality in the privately-owned mains connected to its distribution system. Such analysis must include, but not be limited to: (1) the costs and benefits of installing Company-owned blowoffs or hydrants at the termination points of the privately-owned mains (Exh. DPU 5-10); and (2) the costs and benefits of replacing the existing privately-owned mains with Company-owned distribution mains. Housatonic Water shall include a report of this analysis and any recommended actions as part of the Company’s next base distribution rate case.

The Department’s approval of the Settlement is based on our expectation that the Company will aggressively seek to minimize its capital project costs through grants and the use of low-cost financing programs, such as those available through the Drinking Water State

Revolving Fund. Failure to do so may be considered as evidence of imprudence in a future Department review. Housatonic Water states that it has sought and will continue to seek public financing and grant funding opportunities for its capital projects through various sources (Exhs. STB 2-1; DPU 4-5; DPU 4-6). In particular, Housatonic Water currently has a pending grant application for the Manganese Filtration System project (Company Reply Comments at 5). If the grant is confirmed, it will be applied to reduce costs to ratepayers in the Company's Phase 2 compliance filing (Company Reply Comments at 5).¹¹ The Company shall promptly inform the Department upon its receipt of any grants or low-cost financing. In addition, in each compliance filing made in accordance with this Settlement, the Company shall include a detailed description, with supporting documentation, of all efforts it has taken to minimize its capital project costs through grants and the use of low-cost financing programs.

Finally, the Department fully expects that Housatonic Water will comply with the terms of the Settlement and the Department's directives. If the Company does not comply or the directives do not lead to continued improvements in overall service quality (as discussed in Section IV, below), the Department will consider taking remedial action under the provisions of G.L. c. 164, § 93, which could include additional directives for specific service

¹¹ To the extent that Housatonic Water receives grant funding or similar financial assistance, the grant funds will be treated as a contribution in aid of construction, which represents an offset to rate base. D.P.U. 23-11, at 68-69. See also NSTAR Gas Company, D.P.U. 19-120, at 151 (2020); NSTAR Electric Company, D.P.U. 10-163-A/D.P.U. 11-92, at 3 n.6 (2011); Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 09-33, at 5 (2010).

quality improvements, or invoking G.L. c. 164, § 78, recommending the Attorney General take action to enforce the Department's Order. Century Mill, L.P., D.P.U. 18-157, at 29 (2019); Andrews Farm Water Company, D.P.U. 17-35-C at 23 (2018); D.P.U. 12-86, at 305; West Stockbridge Water Company, D.P.U. 16304 (1970).

Each of the Towns argue that the Department should impose further conditions on the Company's proposed rate increases and authorize a lower return on common equity (West Stockbridge Comments at 2; Stockbridge Comments at 6; Tr. B at 30-41). As discussed above, the terms of the Settlement are not severable (Settlement at §§ 2.4, 2.5). Therefore, the Department cannot approve some terms but not others, and we make our decision based on the terms of the Settlement as a whole.

For the reasons discussed above, the Department finds that the Settlement produces a level of revenues consistent with the establishment of just and reasonable rates. The Department further concludes that the Settlement is consistent with both applicable law and the public interest. Finally, the Department finds that the Settlement represents a reasonable resolution of the many issues in this proceeding as they pertain to the Company and avoids the additional expense to ratepayers of fully adjudicating this matter. Fitchburg Gas and Electric Light Company, D.T.E. 06-109, at 9 (2007), citing NSTAR Electric Company, D.T.E. 03-121, at 49 (2004); Housatonic Water Works Company, D.T.E./D.P.U. 07-28-A at 7 (2008). Accordingly, the Department approves the Settlement.

Within seven days of the date of this Order, the Company shall refile its Schedule of Water Rates tariff. The Company shall number this tariff as "M.D.P.U. No. 23" with an

effective date of August 1, 2024. Housatonic Water also shall change the issued date to the date the Company files its revised tariff with the Department and amend the cover sheet to indicate that M.D.P.U. No. 23 is cancelling M.D.P.U. No. 18.

IV. SERVICE QUALITY

A. Introduction

Over the past several years, Housatonic Water has experienced a number of serious problems related to service quality. In particular, the Company has been repeatedly found in violation of DEP's surface water treatment rules and drinking water regulations (see generally, D.P.U. 1-2, Att.; DPU 1-3, Att.; D.P.U. 1-4, Att.; D.P.U. 1-6, Att.). DEP and the Company have executed three ACOs since 2016 regarding Housatonic Water's violations of: (1) DEP's surface water treatment monitoring and reporting requirements; (2) lead or copper maximum contaminant level exceedances in September 2015, June 2016, November 2016, and June 2017;¹² and (3) HAA5 maximum contaminant level exceedances in the third and fourth quarters of 2021 as well as the second quarter of 2022 (Exh. DPU 1-2, Att.). In addition, DEP's 2018 and 2020 sanitary surveys¹³ of the Company's water system found three violations of DEP's drinking water regulations, ten deficiencies regarding the

¹² The Company reports that there have been no exceedances of the action level for either lead or copper since January 1, 2021 (Exh. DPU 5-6).

¹³ A sanitary survey is an on-site review of the water sources, facilities, equipment, operations, and maintenance of a public water system for the purpose of evaluating the system's ability to produce and distribute safe drinking water (Exh. DPU 1-4, Att. at 28).

Company's operations, and several required corrective actions involving the Company's treatment, storage, and distribution facilities (Exh. DPU 1-4, Att.).

B. Public Comments

The record in this proceeding includes a substantial number of comments from the Company's customers and several from town officials that address Housatonic Water's poor service quality.¹⁴ Numerous customers identified perceived general financial mismanagement and a lack of infrastructure maintenance as two key issues requiring action (see, e.g., Tr. A at 21-25, 37-39; Berens Comments (June 29, 2023)). Customers also were skeptical of proposed investments in water filtration based on uncertainty that a new system would resolve underlying water quality issues (see, e.g., Tr. A at 52-53; Martin Comments (June 29, 2023); Berens Comments (June 29, 2023)). Several commenters expressed health concerns related to their potential exposure to contaminated water (see, e.g., Tr. A at 28-29, 59-61; Louis Comments (June 18, 2024); Hasting Comments (August 11, 2023); Moore Comments (September 20, 2023)). Commenters vividly described the negative impact of having to live with constant concern about exposure to HAA5, manganese, and chlorine (see, e.g., Tr. A at 83; Augcomfar Comments (July 27, 2023); Crofut Comments (September 22, 2023)). In addition, commenters described problems using their water for daily tasks due to discoloration (see, e.g., Tr. A at 28-29, 59-61; Louis Comments (June 18, 2024); Hastings Comments (August 11, 2023); Moore Comments (September 20, 2023)). A few attendees

¹⁴ Attendees at the public hearing for Housatonic Water's last rate case also discussed the poor service and water quality provided by the Company. D.P.U. 15-179-A at 4.

also expressed their dissatisfaction with the Company's customer service, calling the Company's interactions towards customers hostile, rude, and intimidating (Tr. B at 67, 78-79). As a result of the Company's perceived mismanagement and poor service quality, many commenters asked for an alternate entity to take control of the water system (see, e.g., Tr. A at 43-44; HWWC Customer Petition (September 26, 2023)).

C. Discussion

The Department has general supervisory authority over companies, other than municipal corporations, engaged in the distribution and sale of water in the Commonwealth. G.L. c. 165, § 1, et seq. Water companies subject to the Department's jurisdiction must comply with numerous statutory requirements, including, but not limited to, obtaining Department approval of: (1) the rates to be assessed to customers pursuant to G.L. c. 164, § 94; and (2) any issuances of stock or debt instruments pursuant to G.L. c. 164, § 14. Further, pursuant to G.L. c. 164, § 93, the Department may investigate, at any time, the price or quality of water sold and delivered by a jurisdictional water company to its customers.¹⁵

DEP implements and enforces statutes and regulations of the Commonwealth for the protection of the public drinking supply, including G.L. c. 111, §§ 5G and 160 and the Drinking Water Regulations at 310 CMR 22.00 (Exh. DPU 1-2, Att. at 20). In addition, DEP has primary enforcement responsibility for the requirements of the Federal Safe

¹⁵ The provisions of G.L. c. 164, §§ 93 and 94 are applicable to water companies pursuant to G.L. c. 165, § 2.

Drinking Water Act, 42 U.S.C. § 300f et seq. and the regulations promulgated thereunder (Exh. DPU 1-2, Att. at 20). While DEP is tasked with regulating water quality and safety, the Department may also consider whether a company can demonstrate compliance with DEP's water quality and safety standards. D.P.U. 17-35-C at 18-20; D.P.U. 12-86, at 297-305.

Service quality is critical issue for the Department. Reasonable service quality is the cornerstone to a good working relationship between a company and the communities that it serves. 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). In reviewing a water company's service quality, the Department has examined, among other things, customer service and communications, infrastructure replacements and improvements, and emergency plans. Milford Water Company, D.P.U. 12-86, at 298 (2013); D.P.U. 11-43, at 251-275; Aquarion Water Company of Massachusetts, D.P.U. 08-27, at 212-221 (2009).

As discussed above, the Department received a number of public comments regarding Housatonic Water's communications with its customers, including instances of non-responsiveness and rudeness by both Company management and its attorneys (Tr. B at 66-67, 78-79; Rowland Comments at 1 (September 27, 2023); Walsh Comments at 1 (September 27, 2023)). Customer service and communications of this type are unacceptable.

As a public utility that possesses more information relative to its system than what can be reasonably expected to be known by its customers, Housatonic Water has an ongoing obligation to keep customers and government officials informed about the Company's

activities. Such interactions with customers must, at all times, be respectful, informative, and timely. In this regard, the Department expects that the Company will respond to customer calls within a reasonable period (e.g., within one business day for non-emergency calls in most circumstances). Customers who experience difficulty communicating with the Company can contact the Department's Consumer Division for assistance.¹⁶

Despite these issues with customer service, the Department is encouraged by the Company's recent efforts to address HAA5 exceedances on its system. With respect to the exceedances of HAA5 underlying DEP's most recent ACO, the Company has demonstrated that it engaged an engineering firm to evaluate the cause of the violation, developed recommendations for preventing future violations, obtained a DEP permit to modify its treatment process, and completed the capital project (Exhs. DPU 1-2, Att. at 20-30; DPU 1-6, Att., pt. 1, at 45-46, pt. 2, at 27-31, 60-70; pt. 5, at 112-144; DPU 1-7). As of the date of this Order, the Company's HAA5 test results indicate compliance with DEP requirements (Exh. DPU-SP 2-2 & Atts.). To ensure that the Department remains appropriately informed about the Company's compliance with water quality and safety standards, Housatonic Water shall promptly provide the director of the Department's Rates and Revenue Requirements Division, upon receipt from DEP, copies of all sanitary surveys and notices of noncompliance. This is an ongoing reporting requirement and shall continue after the term of the Settlement.

¹⁶ Customers can reach the Department's Consumer Division by email at DPUConsumer.Complaints@mass.gov or by telephone at (617) 737-2836.

Regarding the Company's water discoloration issues, Housatonic Water represents that it conducted extensive testing to identify potential causes of water discoloration in its source of supply other than manganese concentrations. The Company opines that, based on test data and analysis by its engineers and consultants, the primary source of discoloration is the presence of manganese at Long Pond (Exhs. DPU 1-8, Att. at 7; DPU 5-2; AG 1-7, Att. A at 131).¹⁷ Nonetheless, commenters expressed concerns about whether the proposed Manganese Filtration System would be an effective remedy for the water discoloration issues, given the age and condition of the Company's distribution mains (Tr. A at 28; Tr. B at 55-56, 61-64, 72, 90; Hori Comments (June 14, 2024); Berens Comments (June 14, 2024); Regan Comments (September 27, 2023)). Commenters also expressed concerns about the sampling and analytical techniques relied upon by the Company and its engineers in recommending the Manganese Filtration System as a solution (Tr. B at 56, 62-63; Stark Comments at 1 (June 21, 2024); Berens Comments at ¶¶ 5, 6 (June 20, 2024); Berens Comments at 1-7 (June 14, 2024); Berens Comments at 1-2 (September 20, 2023); Augcomfar Comments at 1 (July 27, 2023)).

As described above, the Company's proposed solution to the water discoloration issue (i.e., installation of the Manganese Filtration System) will be subject to a prudence review as

¹⁷ The evidence in the record identifies two separate causes of water discoloration: (1) turbid and dark-colored water resulting from suspended particles caused by hydraulic disturbances such as main flushing, hydrant testing, and firefighting; and (2) a transparent yellow discoloration resulting from manganese in the treated water (Exh. AG 1-7, Att. A at 131).

part of Phase 2 of the Settlement. A prudence review involves a determination of whether the utility's actions, based on all that the utility knew or should have known at the time, were reasonable and prudent in light of the extant circumstances. A prudence review must be based on how a reasonable company would have responded to the particular circumstances and whether the company's actions were in fact prudent in light of all circumstances that were known, or reasonably should have been known, at the time a decision was made. Boston Gas Company, D.P.U. 93-60, at 24-25 (1993); Western Massachusetts Electric Company, D.P.U. 85-270, at 22-23 (1986); Boston Edison Company, D.P.U. 906, at 165 (1982). Therefore, all issues regarding the prudence of the Manganese Filtration System will be thoroughly considered in our review of the Company's Phase 2 compliance filing. At that time, the Company will be required to demonstrate, with complete and detailed documentation, that: (1) its decision to install the Manganese Filtration System was prudent;¹⁸ and (2) all Manganese Filtration System expenditures satisfy the Department's prudent and used and useful standard.

The Department acknowledges the deep frustration voiced by the Company's customers in this proceeding and the desire by many for the Department to facilitate the sale of Housatonic Water to Great Barrington or some other entity. The Company's legislative charter authorizes Great Barrington to purchase the Company. St. 1897, c. 229, § 6. The charter conditions Great Barrington's right to purchase the Company on the assent of the

¹⁸ One potential area of inquiry will be the statistical reliability of the sampling performed by the Company's engineers.

residents of Great Barrington by a two-thirds favorable vote at a town meeting called for that purpose and specifies the purchase price formula to be used. St. 1897, c. 229, § 6. Accordingly, a change of the Company's ownership needs to take place either in accordance with the provisions of the charter or through a voluntary sale by Housatonic Water. The Department does not have the authority to force a sale of the Company to another entity as requested by some commenters.

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. The Settlement recognizes the Towns as essential stakeholders in ensuring that their residents who are customers of the Company receive safe and reliable water service at the lowest possible cost. We encourage the Towns and the Company to immediately begin the robust stakeholder process needed to address the capital projects identified in the Settlement and to improve the Company's operations for the benefit of ratepayers over the long term.

V. CONCLUSION

In the sections above, the Department found that the Settlement is consistent with the public interest, results in just and reasonable rates, and represents a reasonable resolution of the many issues in this proceeding. Accordingly, the Department approves the Settlement.

In accordance with the terms of the Settlement, the Department's acceptance does not constitute a determination as to the merits of any allegations, contentions, or arguments made

in this proceeding not expressly covered by the Settlement. Milford Water Company, D.T.E. 05-61, at 5 (2006). In addition, the Department's acceptance does not establish a precedent for future filings, whether ultimately settled or adjudicated.

Notwithstanding any agreements reached by the Settling Parties, the Department may enforce any of the commitments or obligations provided in the Settlement and the terms of this Order under its regulatory authority, including G.L. c. 165, § 4 and G.L. c. 164, § 94, and not as a matter of contract law. This Order is intended to be, and shall be construed to be, a final Order of the Department issued pursuant to G.L. c. 25, § 5, and expressly does not form, and may not be considered to form, a contract binding on the Department or the Commonwealth of Massachusetts.

VI. ORDER

Accordingly, after due notice, public hearing, and consideration, it is

ORDERED: That the Joint Motion for Approval of Offer of Settlement, submitted by Housatonic Water Works Company and the Attorney General on April 26, 2024, is GRANTED, and the Offer of Settlement, dated April 26, 2024, is APPROVED; and it is

FURTHER ORDERED: That proposed tariffs M.D.P.U. No. 21 and M.D.P.U. No. 22, filed on January 16, 2024, to become effective June 1, 2024, are DISALLOWED; and it is

FURTHER ORDERED: That proposed tariffs M.D.P.U. No. 23 and M.D.P.U. No. 24, filed on April 26, 2024, to become effective August 1, 2024, are DISALLOWED; and it is

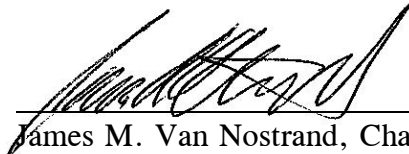
FURTHER ORDERED: That Housatonic Water Works Company shall file new schedules of rates and charges as required by this Order and shall design all rates in compliance with this Order; and it is

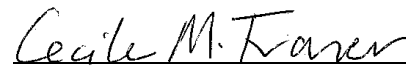
FURTHER ORDERED: That the new rates shall apply to water consumed on or after August 1, 2024, but unless otherwise ordered by the Department, shall not become effective earlier than seven days after the rates are filed with supporting data demonstrating that such rates comply with this Order; and it is

FURTHER ORDERED: That Housatonic Water Works Company shall file new rules and regulations as required by this Order; and it is

FURTHER ORDERED: That Housatonic Water Works Company shall comply with all other directives contained in this Order.

By Order of the Department,


James M. Van Nostrand, Chair


Cecile M. Fraser, Commissioner


Staci Rubin, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.