

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on July 18, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-W-1561 - Petition of Beaver Dam Lake Water Corporation
for an Order Authorizing Petitioner to Issue
and Sell Long Term Debt In an Amount not to
Exceed \$2,100,000 and To Increase Water Rates
and Surcharges.

ORDER AUTHORIZING FINANCING AND SURCHARGE

(Issued and Effective July 26, 2007)

BY THE COMMISSION:

INTRODUCTION

By petition filed December 21, 2006, Beaver Dam Lake Water Corporation (Beaver Dam or the company) requested authority pursuant to Public Service Law (PSL) §89-f to enter into a loan agreement with the Environmental Facilities Corporation (EFC) for an amount up to \$2,100,000. In order to pay for the interest and principal of the loan, the company also requested that it be allowed to increase its current surcharge from \$200 to \$870.

Beaver Dam provides flat rate water service to approximately 160 customers (with 158 service taps) in the Towns of New Windsor and Cornwall in Orange County, New York. Fire protection service is not provided. Beaver Dam is a water corporation that is owned and operated by the homeowners it serves who receive shares in the water corporation when they purchase a home.

By letter dated June 21, 2007, EFC informed the company that it was approving the company's request for hardship loan status in the amount of \$1,842,900. The lower loan amount reflects a new estimate of overall construction costs. This designation will save the company over \$700,000, since the company will pay no interest on the loan and pay no issuance fees. In addition, the company can now finance the loan amount over 30 years, further reducing the yearly cost to customers. As a result, the estimated surcharge for the loan has been lowered to approximately \$390.

As discussed below, we grant the company's requests with modifications.

BACKGROUND

The company must make significant improvements to the water system in order to comply with Orange County Department of Health (Orange County DOH) recommendations. Among the projects needed are a new well or wells, a 60,000 gallon storage tank, water main improvements, meter installations, new booster pumps, a hydro pneumatic tank, stand-by generators and the installation of micro-filtration cartridge systems on the wells for treatment of bacteria. The New York State Department of Health (State DOH) has ranked the company's projects high enough to be eligible for tax-exempt funding through EFC and has granted it hardship status, as discussed later.

In 1999, we approved an annual surcharge of \$200 for a single family home as well as a \$300 and \$400 surcharge for two-and-three family homes (the 1999 surcharge).¹ On March 15, 2007, the company petitioned the Commission for an exemption

¹ Case 99-W-1090, Beaver Dam Lake Water Corporation, Untitled Order (issued October 29, 1999).

from the rate setting provisions of PSL 89-c (10) which was granted June 26, 2007.² This allows the company flexibility in setting rates for operating expenses and to surcharge customers for capital improvements or emergency repairs, some of which are related to the proposed EFC financing. The company has used revenues from the 1999 surcharge to upgrade distribution lines and funds from the surcharge are being used to pay legal and engineering fees related to obtaining the EFC loan. The need for the 1999 surcharge will be greatly diminished after the EFC loan is secured.

In January 2006, the company began to surcharging customers \$320, \$640, and \$960 for single-, two-and-three family homes, respectively. The company did not request Commission approval for the increased surcharge. In the instant petition the company requests that we sanction this increase. Our Order in Case 07-W-0324 renders this request unnecessary. However, another dedicated surcharge is required for the EFC loan and, therefore, we must approve another surcharge for customers (EFC Surcharge).

Notice of the petition was published in the State Register pursuant to State Administrative Procedure Act (SAPA) §202(1) on January 24, 2007. No comments were received in response to the notice.

ENVIRONMENTAL QUALITY REVIEW

Under the State Environmental Quality Review Act³ (SEQRA) and its implementing regulations (6 NYCRR Part 617 and

² Case 07-W-0324, Beaver Dam Lake Water Corporation, Order Allowing Annual Revenue Increase (issued June 26, 2007).

³ New York Environmental Conservation Law, Article 8 (McKinney 1997), 6 NYCRR Section 617.6(a)(3).

16 NYCRR Part 7), all State agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. Before commencing construction, Beaver Dam needs to acquire permits and approvals. In addition to the Commission action, reviews and approvals are necessary from the Orange County DOH, the State DOH (approval of the water supply system design), the EFC (loan agreement) and the Town of New Windsor (site plan review).

The proposed action is a petition requesting approval by the Commission of Beaver Dam's petition to incur indebtedness not to exceed \$2,100,000 and to increase the yearly surcharge to \$870 per single family home to pay the costs of the capital project required to improve the Beaver Dam's aging water system and repay the proposed indebtedness.

On February 28, 2007, Beaver Dam's consultant, Fuss & O'Neill, submitted a SEQRA Long Form Environmental Assessment to the Town of New Windsor Planning Board (Board) as part of Beaver Dam's site plan review to be undertaken by the Board. The Board assumed Lead Agency status for the review of the Environmental Assessment, and circulated a letter accordingly. No comments were received. Construction plans and specifications are being prepared and will be submitted to the Board for the site plan review.

We received a copy of the Long Form Environmental Assessment prepared by Beaver Dam's consultant and submitted to the Board. The form and attached material provide an environmental assessment of the construction plans and improvements planned by Beaver Dam. The approval of the planned indebtedness and planned surcharge as an action to be undertaken by the Commission, however, was not recognized in the Long Form Environmental Assessment. Additionally, the Town asserted Lead Agency status and circulated a letter asserting such status for

the Environmental Assessment of the site plan review. We were not recognized as an "involved agency" with financing and ratemaking approval. The Town's site plan review of Beaver Dam's plans for the water system improvements will take place upon completion and submittal of the construction plans and specifications. There is no timetable for submittal and review by the Board.

We determined to undertake an uncoordinated environmental review of the project financing and ratemaking. A coordinated review would require a revision of the Environmental Assessment prepared by Fuss & O'Neill and restart of the review process already underway. Staff contacted counsel for Beaver Dam and requested a Short-Form Environmental Assessment be completed for the financing and ratemaking approval for Beaver Dam's indebtedness and rate-making for debt recovery.

The authorization by the Commission to enter into a loan agreement with the EFC and apply a rate surcharge to Beaver Dam's water customers will provide the monies for design and construction of the proposed replacement of the water system. DEC Staff has indicated that its review of the water system replacement will be based upon the local municipality's SEQRA review. According to a State DOH representative, State DOH does not conduct a SEQRA review in conjunction with its review of the quantity, quality, and engineering design of the water system.

We will conduct an uncoordinated SEQRA review of Beaver Dams request for authorization to enter into a loan agreement with the EFC and surcharge Beaver Dam's customers; assume Lead Agency status under SEQRA for this undertaking; and conduct an environmental assessment.

The proposed action before the Commission does not meet the definition of the Type 1 or Type 2 actions contained in 6 NYCRR §§617.4, 617.5, and 16 NYCRR §7.2, so it is classified

as an "unlisted" action for SEQRA review purposes.⁴ After reviewing the EAF and the petition, we conclude, based upon the criteria for determining significance listed in 6 NYCRR §617.7(c), that the authorization to enter into a loan agreement with the EFC and commence a Capital Improvement Surcharge is in the public interest, and that these actions would not result in significant adverse environmental impacts.

Our review of the Environmental Assessment prepared by Fuss & O'Neill and submitted to the Board indicates that the proposed action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory. Beaver Dam has committed to conducting a preliminary Phase I archaeological assessment after the facility design is completed and before any construction disturbance is initiated.

Our review of the proposed project does not indicate any other significant adverse impacts upon the environment for which mitigation measures are necessary. Determination of any additional mitigation measures will be the responsibility of the Board during the site plan review. The action proposed in the petition will not have a significant adverse impact on the environment and we adopt a negative declaration pursuant to SEQRA.⁵ Because no other significant adverse environmental impacts were found, no Public Notice Requesting Comments is required or needs to be issued. A copy of the Notice of Determination of Non-Significance for this unlisted action is attached as Appendix II. Part 2 of the Short-form EAF has been completed. The completed EAF shall be retained in the Commission's files.

⁴ 6 NYCRR §617.2(ak).

⁵ 6 NYCRR §617.12.

DISCUSSION

Details of the Facilities
and Repairs

The Beaver Dam system has deteriorated over the years. Further, the mains were undersized and there were many dead ends. The 1999 surcharge was designed to allow the company to collect \$440,000 over a 15-year period which was to be used to replace and loop its aging distribution system and install an elevated storage tank. The company has already replaced part of the distribution system. Beaver Dam intended to next install the storage tank once sufficient funds were collected.

Under the Federal Surface Water Treatment Rule of 1993, the company was required to test its wells in 2004 and 2005 to determine if they were influenced by surface water. The company's wells did not pass the tests. By letter dated July 19, 2005 from the Orange County DOH the company was directed to either treat or abandon these wells. However, because of the failure of the well tests Beaver Dam immediately became eligible to obtain State Revolving Fund (SRF) financing. The original project was expanded to also allow for a new well or wells, the installation of water meters, new booster pumps, hydro pneumatic systems, stand-by generators and the installation of filtration systems for treatment of bacteria on all of the wells.

EFC Loan Financing

Beaver Dam's engineer had originally estimated that the new facilities would cost about \$2.1 million and the company had requested to be allowed to borrow up to \$2.1 million from EFC under its SRF over a 20-year period. However, to ease the burden on the customers, Beaver Dam requested that the engineer reduce the scope of the work. The engineer was able to revise

the estimate of the work down to \$1,842,900. In addition, EFC has determined that the customers of Beaver Dam can qualify for hardship status, because the costs of the needed improvements were above the community's ability to pay for the project. The hardship loan in the amount of \$1,842,900 will be for 30 years with no interest or fees.

As the number of loans to small companies increase, including hardship loans, EFC may leverage the loans by offering bonds to the public that are backed by the small water company loans. For this reason, and because of the fragile credit quality of the companies taking the loans, EFC has required some credit enhancing terms for the loans.

Foremost amongst the credit requirements is one that all small water companies receiving loans must agree to a "step-up" provision. This loan provision requires additional, but limited, payments by borrowers in the program if another small water company defaults on a loan payment. If called upon by EFC, the company must increase its surcharge by 10% in its next quarterly billing to help cover the default. Another credit feature of the loan is the requirement that a portion of the loan's principal payments be made ahead of schedule. For Beaver Dam, there is a need to collect approximately \$30,715 in loan payments before the company can close on the loan. This amount would be collected through the surcharge and placed in escrow with the loan trustee. The deposit will earn interest and will be used to pay principal during the last year(s) of the loan. Thus, Beaver Dam customers will not be harmed by the prepayment, since the funds will eventually be used to extinguish debt used to build the facilities that benefit them. During the last year(s) of the loan Beaver Dam customers may avoid payment of the full surcharge. The surcharge can only be used to pay

principal on the loan and step-up payments; otherwise, it is refunded to customers.

In general, the SRF loans follow the terms and conditions established in a previous Commission approved pooled financing case.⁶ A trustee will retain the funds and the company will apply to the trustee when it needs to pay for the new facilities. Because of the hardship nature of the loan the company expects issuance costs to be limited to legal fees of approximately \$20,000. These fees are included in the loan amount and will be amortized along with the loan. Other terms of the loan are as follows:

1. Term: 30 years
2. Prepayment penalty: None
3. Interest Rate: None
4. Security: A pledge on all revenue and a dedicated surcharge
5. Restrictions: Sale of the company needs EFC approval

Surcharges

Beaver Dam applied for lightened regulation, which was granted on June 26, 2007. Beginning January 1, 2006 the company increased the 1999 surcharge to \$320 per year without Commission approval. Now that the company has authority to charge what it needs in the surcharges and base rates, we see no need to address the increase in the surcharge from \$200 to \$320. The proceeds from the 1999 surcharge, which remain in the escrow account, are being used for some of the capital expenses as well as for a portion of legal and engineering fees associated with

⁶ Case 92-W-0791, Cambridge Water Works Company et. al.-
Financings, Untitled Order (issued January 28, 1994).

the EFC loan. This may reduce the loan amount for plant replacements discussed above.

EFC Surcharge

Although the company can now set its own rates and surcharges, EFC requires our approval of EFC loans and the related surcharges. The company must surcharge customers for the principal on any EFC loan it secures. The amount of this surcharge is approximately \$61,430 annually. The company will place all the money collected in the EFC surcharge in a dedicated bank account. The company will reconcile collections with charges each year such that \$61,430 is collected annually. The first annual surcharge should be for \$390 (\$97.50 per quarter) for each of 158 service taps.

Accounting for the New Plant

Because the company is financing all the new plant with an EFC loan paid for with a dedicated customer surcharge, the company must not include the recovery of the plant in base rates. Accordingly, throughout the life of the new plant any differences between the depreciation and the amount of the loan repayment should be recorded as customer contributed capital.

CONCLUSION

We approve the company's request for authority to enter into a loan of up to \$1,842,900 with the EFC. The plant improvements are necessary for the continued provision of safe and adequate water service for the customers of Beaver Dam and they provide the basis and the need for the financing. The terms and conditions of the loan are the same as those offered other small water companies in the State.

The Commission Orders:

1. Beaver Dam Lake Water Corporation is authorized to enter into a loan agreement with the Environmental Facilities Corporation for not more than \$1,842,900 of aggregate principal of debt. The proceeds from the issuance of these securities shall only be used for the purposes described in Ordering Clause 2 below.

2. The proceeds from the loan authorized by this Order may be used only for the permanent financing of short-term debt and other corporate purposes as discussed in the body of this Order.

3. Within 30 days after the execution of any debt financing authorized under this Order, Beaver Dam Lake Water Corporation shall file with the Secretary of the Commission a complete term sheet on the transaction. The filing should include a detailed breakdown of the external costs associated with the new issue.

4. Beaver Dam Lake Water Corporation shall file a new surcharge, entitled "State Drinking Water Revolving Fund Surcharge," to go into effect on October 1, 2007, in the form shown on Appendix I of this Order. After the financing is approved by the New York State Environmental Facilities Corporation and the actual debt service is known, the company is permitted to file a final surcharge statement, as needed to match the debt service requirements of the financial documents to go into effect on not less than three days notice to the Commission.

5. Any new adjusted charges filed in reference to Ordering Clause No. 4, above, will be charged to each service tap as set forth in Appendix I.

6. The requirements of Section 89-c (10) of the Public Service Law and 16 NYCRR 530.70 as to newspaper

publication of the amendment shown in Appendix I and the amendments directed in Ordering Clauses 4 and 5 above be waived provide the company individually notifies its customers, with copy to the Secretary of the Commission, no later than August 14, 2007, as to the Commission's determination in this matter.

7. Beaver Dam Lake Water Corporation shall maintain its books and records such that items relating to the surcharge, including billings, collections accounts receivable, and cash held, as well as the financial components of the loan and related investments are in separate accounts.

8. The loan authorized by this Order shall not be undertaken by the company unless and until there has been filed with the Secretary of the Commission an unconditional acceptance by petitioner agreeing to obey all the terms, conditions and requirements of this Order. If such acceptance is not so filed within a period of 30 days from the effective date of this Order, this Order may be revoked by the Commission without further notice.

9. If the surcharges are used for purposes other than paying the annual debt service on the loan or other uses authorized in the documents describing the terms of the loan and this order, the Commission may instruct ratepayers to stop paying the surcharges or authorize that the surcharges be paid to an independent trustee.

10. Commission approval is contingent on the receipt by the Secretary of the Commission of loan documents that are consistent with the terms and conditions discussed in this order.

11. This proceeding is continued, but shall close once compliance filings have been made and reviewed, unless the Secretary of the Commission finds good cause to continue the proceeding further.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

PSC NO: 4 WATER

STATEMENT TYPE: SURCHARGE

COMPANY: BEAVER DAM LAKE WATER CORPORATION

STATEMENT No. 1

INITIAL EFFECTIVE DATE: 10/01/2007

State Drinking Water Revolving Fund Surcharge

STATEMENT NO. 1

Beaver Dam Lake Water Corporation is authorized to surcharge the bills of all of its customers, quarterly for about 120 quarters, to repay an Environmental Facilities Corporation (EFC) loan used to cover the costs of system improvements estimated to cost about \$1,842,900. The initial quarterly surcharge is estimated to be \$97.50 per quarter per service tap. There are currently 158 service taps. The surcharge will be adjusted to reflect the actual costs of improvements and financing costs related thereto. The company is authorized to collect a levelized surcharge over the term of the EFC loan, effective October 1, 2007. If the company experiences any undercollections/overcollections or changes in the required levelized annual loan payments* and associated charges required, it will file a new surcharge statement to become effective January 1 of the following year. The calculation of the surcharge for all succeeding periods is shown below:

Annual debt service funding required	\$61,430
Prior periods under (over) recovery	\$0
Total estimated funding required during the next year.	\$61,430
Quarterly surcharge (for each service tap)	\$ 97.50

This surcharge will be adjusted or eliminated in the final years when there are sufficient funds in the EFC escrow account to pay off the balance of the loan.

Note: Any new statements the company files with the Commission will be audited by the Department of Public Service.

* Private water companies with EFC loans from the State Revolving Fund are placed in a pool and if any company defaults, EFC can increase the payments required by the other companies in the pool by up to 10%. Should EFC increase the required payment the company will file a statement containing the increased surcharge, on not less than three days notice, to go into effect the following quarter without further Commission action.

Issued By: Christopher Sherwood, President, 305 Chestnut Ave., New Windsor, NY 12533
(Name of Officer, Title, Address)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 06-W- 1561 - Petition of Beaver Dam Lake Water Corporation for an Order Authorizing Petitioner to Issue and Sell Long Term Debt in an Amount not to exceed \$2,100,000 and to Increase Water Rates and Surcharges

NOTICE OF DETERMINATION
OF NON-SIGNIFICANCE
Negative Declaration

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission, of a Petition of Beaver Dam Lake Water Corporation for an Order authorizing the Petitioner to issue and sell long-term debt in an amount not to exceed \$2,100,000 and to increase water rates and surcharges to finance system improvements and to surcharge customers to repay the principal amount of the loan based upon our determination in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse impact on the environment. The approval of this action is an Unlisted Action as defined under 6 NYCRR §617.2(ak).

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary