STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-458

November 5, 2002

CONSUMERS MAINE WATER –
Proposed Rate Change ($124,714 or 74.7% Increase in Revenue)

ORDER APPROVING STIPULATION

WELCH, Chairman; NUGENT and DIAMOND

I. SUMMARY

We allow the rate increase for Consumers Maine Water Company – Hartland Division (Consumers) as stipulated in the settlement agreement dated October 9, 2002 between the Office of the Public Advocate and Consumers to take effect for service provided beginning November 15, 2002 subject to the conditions discussed in this Order.

II. PROCEDURAL HISTORY

On August 5, 2002, Consumers, pursuant to section 307 of Title 35-A of the Maine Revised Statutes, filed a proposed rate increase for its Hartland Division. On August 9, 2002, the Office of Public Advocate (OPA) filed a petition to intervene in the case.

On September 9, 2002, a procedural order was issued scheduling a technical conference on September 18, 2002 to discuss the schedule and specific issues as well the potential for settlement. In addition to this technical conference, both the Staff and the OPA issued data requests and several informal conference calls were held between the parties to discuss issues in the case.

On October 9, 2002, Consumers filed a stipulation between the Company and the OPA that would resolve the case. The Staff issued Advisor's Data Request No. 2, requesting information regarding the stipulation and its effect on ratepayers, and both the Company and the OPA issued responses.

By telephone on October 29, 2002, both Consumers and the OPA waived the opportunity to comment on the Staff's recommendations.

III. STIPULATION

The stipulation provides for annual operating revenues of $291,647, an increase of $124,714,[1] or 74.71%, over operating revenues of $166,933 at existing rates, and an allowed rate base of $1,535,851. The capital structure and cost of capital included in the stipulation is as filed by the Company based upon December 31, 2001 actual plus

[1]The amount of the rate increase allowed in the stipulation is the same increase proposed by the Company in its original filing.

current Hartland Division – specific debt as presented on Exhibit CMW-18B. The rate increase will be allocated pro rata across all metered and fire protection classes.

Consumers noted in its original filing that the primary reason for the rate increase were the significant changes in Hartland's operations. Specifically, Hartland developed a new groundwater source, along with an iron and manganese filtration facility, a new storage tank in addition to the water main improvements necessary to connect the new facilities to the existing system. Consumers was able to reduce the impact of these improvements by securing Disadvantaged Community Funds through the Maine State Revolving Loan Program under the Maine Drinking Water Fund. The financing package included $1.4 million of funds that would not have to be repaid as well as $1.1 million to be repaid with a 0% interest rate. (Petition at Paragraph 11)

With the exception of the provisions in paragraph 6, the parties agreed that the Stipulation Agreement would not be considered legal precedent. Paragraph 6 addresses the treatment facilities and transmission main associated with the Starbird Pond (Starbird facilities) supply as they presently exist. The Company agreed to maintain the facilities to serve as a back-up source of water supply for the Hartland Division in the event of an emergency. The parties also agreed that the annual maintenance expenses for the Starbird facilities were not included in the Company's revenue requirements in this proceeding and shall not be recoverable in rates during any period in which the Starbird facilities remain as back up.

IV. ANALYSIS AND RECOMMENDATION

In approving a stipulation, we consider whether the parties joining the stipulation represent a sufficiently broad spectrum of interests, whether the process leading to the stipulation was fair and whether the stipulated result is reasonable and not contrary to legislative mandate. *See e.g., Consumers Maine Water Company, Proposed General Rate Increase of Rockland and Hartland Divisions,* Docket No. 96-739 (July 3, 1997) at 2. The Public Advocate represents the using and consuming public, in this case the customers of the Hartland Division. The process of discovery, the technical conference and the informal conference calls allowed an opportunity for all interested persons to gather information about the reasons for the increase.

We believe that the process was fair; all interested parties had an opportunity to participate. We find that the proposed Stipulation resolves this case consistent with the law and the public interest. The stipulation as filed results in rates that are just and reasonable and in the best interest of ratepayers. It also reduces the risk of increased costs if the case were fully litigated. We further find that the conditions to the stipulation are reasonable as clarified below.

The Starbird facilities are the primary water source for the Hartland division until the new facilities, including two new wells located more centrally, are placed into

service.[2] The two wells are located near each other, which raises some concern as to the need for an additional back-up supply. It is possible that Hartland would not be able to use one of these wells as back-up while well maintenance work is being performed on the other well. The stipulation does provide reassurance that Consumers will maintain the Starbird facilities as a back-up supply in the event of an emergency. However, Consumers plans to retire the facilities on its books and records. This transaction could result in the Starbird facilities being reclassified as non-utility property no longer subject to the Commission's jurisdiction. Our approval of the stipulation is subject to the condition that Consumers will not sell, dispose of, or otherwise abandon the Starbird facilities, as defined in Paragraph 6 of the stipulation, without seeking Commission approval.

The Staff also requested that each party provide its interpretation to what precedent was being established by Part III.6 of the Stipulation. Both parties responded with somewhat different interpretations. In order to ensure the same interpretation and with Consumer's concurrence given on October 29, 2002, we will adopt the OPA's interpretation of that precedent:

> The language at the beginning of Part III, Paragraph 2 ("With the exception of the provisions in paragraph 6, below, . . .") is intended to confirm that, as indicated in Part III, paragraph 6, in this case and in future cases, the Company will not be permitted to recover the annual maintenance expenses for the Starbird facilities unless those facilities are returned to service.

The Company recently requested that the effective date of the rate increase be delayed until November 15, 2002. The Company has experienced delay in the connection of the electrical power supply to the new facilities. The new water supply facilities are now scheduled to be placed in service by November 12, 2002.

V. CONCLUSION

We approve the stipulation filed by the parties in this case subject to the two conditions noted above to be effective on November 15, 2002 and therefore,

ORDER

1. That the Stipulation filed on October 9, 2002 be approved subject to the conditions noted in this order; and

2. That the Hartland Division Rate Schedules, Pages 1 through 4, Fourth Revision filed on August 5, 2002 are approved for effect November 15, 2002.

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[2]At the time of the September 18, 2002 technical conference, Consumers expected an in-service date of November 1, 2002 for the new facilities.

Dated at Augusta, Maine, this 5th day of November, 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.