

**STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION**

CASE 17-W-____ – Petition of Bristol Water-Works Corporation to Defer Extraordinary Water Main Leak Repair Costs Over and Above the Level Last Established in Rates

VERIFIED PETITION

NIXON PEABODY LLP
Attorneys for Bristol Water-Works
Corporation
1300 Clinton Square
Rochester, New York 14604-1792
Telephone: (585) 263-1000
Facsimile: (585) 263-1600
E-mail: swidger@nixonpeabody.com

January 6, 2017

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. BACKGROUND.....	1
A. JANUARY 2015 RAW WATER MAIN BREAK.....	2
B. APRIL 2015 SERVICE CONNECTION LEAK.....	2
C. OCTOBER 2015 RAW WATER MAIN BREAK.....	2
III. DISCUSSION.....	2
A. INCREMENTAL COSTS INCURRED.....	2
B. PROPOSED ACCOUNTING ENTRIES.....	3
C. CRITERIA FOR DEFERRAL AND RECOVERY.....	3
D. METHOD OF RECOVERY.....	6
IV. CONCLUSION.....	7

APPENDIX A – Calculation of Deferral Amount
APPENDIX B – Accounting Entries
APPENDIX C – Income Statements and Balance Sheets

**STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION**

CASE 17-W-____ – Petition of Bristol Water-Works Corporation to Defer Extraordinary Water Main Leak Repair Costs Over and Above the Level Last Established in Rates

VERIFIED PETITION

I. INTRODUCTION

By this Petition, Bristol Water-Works Corporation (“Bristol” or the “Company”) seeks authority to defer, for later recovery, water main leak repair costs incurred by the Company in 2015 over and above the level included in the rates established pursuant to the Public Service Commission’s (the “Commission”) untitled Order issued March 17, 2009 in Cases 08-W-1272¹ and 06-W-1546² (the “2009 Rate Order”). The incremental amount of leak repair costs totals approximately \$33,749. Bristol proposes that this amount, together with associated income tax effects, be deferred in Account 186, Miscellaneous Deferred Debits, and recovered either as a surcharge to current rates or later in a manner to be established in future rate proceedings.

II. BACKGROUND

In 2015, Bristol experienced a series of major leaks in its system that required extensive work, in terms of both locating the leaks and repairing them. The extensive and unforeseen work required to address these leaks led directly to the increased expenditures that are the subject of this Petition. The three major leaks are described briefly as follows.

¹ *Minor Rate Filing of Bristol Water Works Corporation to Increase its Annual Water Revenues by \$38,542 or 42.5%.*

² *Complaint of Bristol Harbour Condominiums to Investigate the Metering and Billing Practices of Bristol Water Works Corporation.*

A. JANUARY 2015 RAW WATER MAIN BREAK

In January 2015, Bristol experienced a 30 to 35 gallon per minute (“GPM”) loss in a raw water main near the Seneca Point Road crossing. Because this leak was well masked by the physical features in the vicinity, locating it required significant time and effort. The major cost incurred for this repair consisted of rental equipment necessitated by the depth of the repair.

B. APRIL 2015 SERVICE CONNECTION LEAK

In the period leading up to mid-April 2015, the Company had noted a marked increase in filtered water totals, indicating an on-going leak or leaks. With assistance from the Rural Waters Association, Bristol was able to locate the service connection leak under a roadway (Lakewood Trail). Repair work required closure of the road and extensive excavation. The major cost incurred was for equipment rental and excavation.

C. OCTOBER 2015 RAW WATER MAIN BREAK

In the fall of 2015, water loss was noted on the east side of Seneca Point Road. The initial loss was in the range of 15 to 18 GPM. Similar to the January 2015 main break, the source was difficult to pinpoint. The Company contacted On the Mark to assist in leak detection and mapping. The effort required to carry out that work was significant because of the number of facilities of both Bristol and Bristol Sewerage Disposal Corporation in the immediate vicinity, some of which were not on existing maps. Excavations were performed on both sides of the road to pinpoint the leak. In order to ensure safe and effective excavation, City Hill Construction was utilized on a time and materials basis. Among the conditions encountered that added to the time and expense of the repair was the presence of 14 inches of concrete that had been poured over the top of the water easement. The repair was completed in October 2015.

III. DISCUSSION

A. INCREMENTAL COSTS INCURRED

The leak repair costs described above were not provided for in the water rates established by the Commission in the 2009 Rate Order. That Order provided for annual repair costs of

\$10,187.³ Appendix A to this Petition shows Bristol's costs incurred in 2015 for outside vendors providing goods and services for repair and maintenance of the water system. As indicated, the total amount incurred is \$43,510.98, of which \$33,749.30 is attributable to the series of major breaks described above.⁴ The remainder, \$9,761.68, is just \$425.32 less than the amount allowed in rates nearly eight years ago. Thus, with the possible exception of that amount, all of the expenditures for the major breaks described herein are incremental to the amount allowed in rates by the 2009 Rate Order. Moreover, Bristol does not have an "escrow" account or similar mechanism for funding extraordinary costs of this nature.

Notwithstanding that the repairs that are the subject of this Petition were not provided for in current rates, the Company's paramount concern for customer service and system integrity made incurring the incremental costs of repairing these leaks an obvious and prudent decision. The Company could not reasonably postpone such repairs; they required prompt attention.

B. PROPOSED ACCOUNTING ENTRIES

Appendix B to this Petition shows the specific accounting entries proposed for deferral and subsequent amortization of the subject costs.

C. CRITERIA FOR DEFERRAL AND RECOVERY

The Commission permits deferred accounting for expenses where the following three criteria are met:

1. The expense is incremental to the amount allowed in current rates;
2. The incremental amount is material to earnings, extraordinary in nature; and,

³ 2009 Rate Order, App. B, p. 1. As noted in that Order, this allowance "reflects the four-year normalized average of repairs and maintenance supported by the company's repair bills for that period." 2009 Rate Order at 10.

⁴ The costs pertaining to the major breaks are highlighted in Appendix A.

3. The utility is not over-earning.⁵

For the first criterion, Appendix A, as described above, sets forth the incremental vendor costs incurred by the Company. Given the seriousness of the leaks that had to be repaired, Company personnel had to be supplemented by contractors. Similarly, as described earlier, it was also necessary to rent the heavy excavating equipment necessary to find and repair the leaks. These costs are clearly beyond the contemplation of the 2009 Rate Order's obvious shoe-string allowance for routine repair and maintenance.

The second criterion that must be met for deferral treatment is that the amount must be material to the Company's earnings and extraordinary in nature. Historically, the Commission's standard of materiality is that the incremental cost, net of related income taxes, must exceed 5% of the Company's net income available for common shareholders, prior to the extraordinary event, in order to qualify for deferred accounting treatment.⁶ As shown in Appendix C, which contains Income Statements for the twelve months ending December 31, 2012 through 2015 and Balance Sheets for year-end 2012 through 2015,⁷ the incremental leak repair costs for which deferral and recovery are being sought clearly exceed 5% of the net income available to common shareholders before incurrence of these expenses. Indeed, in 2015, the net income deficit is nearly double the amount of the extraordinary expenses for which deferral and recovery are sought here. Accordingly, the expenses to be deferred meet the Commission's materiality threshold.

⁵ See Case 15-E-0464, *Petition of Central Hudson Gas & Electric Corporation for Permission to Recover Deferred Incremental Costs Associated with the 2014 Thanksgiving Storm*, Order Approving Deferred Accounting Treatment for Incremental Storm Restoration Costs, issued January 22, 2016, at 3.

⁶ *Id.* at 4.

⁷ The referenced Income Statements and Balance Sheets are the same as those contained in Appendix F of the Petition filed February 10, 2016 in Case 16-W-0074, *Petition of Bristol Water-Works Corporation, David M. Flaum, E. Philip Saunders, Douglas G. Weins, Greg M. Mulhern, Bristol Harbour Resort Management LLC, Laura L. Cook and Todd D. Cook for Approval of Stock Acquisition*. The Commission issued its Order Authorizing Stock Acquisition on July 15, 2016.

The requested deferral is also extraordinary in nature. “Extraordinary items” are described in the general instructions section of the Uniform Systems of Accounts for water utilities, in relevant part, as follows:

Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and which are not typical or customary business activities of the company shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business. . . . To be considered extraordinary under the above guidelines, an item should be more than approximately five percent of income, computed before extraordinary items. . . .⁸

Major water main breaks on an otherwise sound water distribution system are, by their very nature, extraordinary. Such breaks have a significantly greater impact on the system than minor leaks that occur from time to time and are substantially less disruptive of service and demanding of resources. Indeed, the fact that Bristol’s current rates make no provision for major repairs of this nature confirms that such events are out of the ordinary and cannot be expected to occur frequently. Thus, there can be little doubt that the instant circumstances are appropriately regarded as “extraordinary.”

The third criterion that must be met for deferred accounting treatment is that the utility cannot be over-earning. In the 2009 Rate Order, Bristol was authorized to earn a pre-tax rate of return on equity (“ROE”) of 11.0%.⁹ As discussed above, Appendix C shows that, in 2015, the

⁸ 16 NYCRR § 561.7. Although this definitional guidance appears in the portion of the Commission’s regulations specifically referencing Class A and B water utilities, it would appear to be equally applicable to Class D and D water utilities. Even if that were not the case, a Class D utility, such as Bristol, may adopt the system of accounts applicable to a higher class utility. *See* 16 NYCRR § 576.1(c).

⁹ 2009 Rate Order at 12.

Company had negative net income and, consequently, a ROE of less than 0%. Accordingly, the Company is not over-earning.¹⁰

Clearly, Bristol meets all of the criteria for deferral and recovery of the subject leak repair costs. Moreover, such recovery is fully consistent with Commission policy to maintain and improve system reliability and safety.

D. METHOD OF RECOVERY

Bristol believes that the magnitude of the subject extraordinary expenditures, together with the Company's current financial condition, would fully warrant immediate implementation of a surcharge to recover those costs over a short period of time, such as one year. If the Commission concludes that a surcharge is the appropriate method of recovery, the Company would have no objection to following that path. If, however, the Commission determines that it would be beneficial to address recovery in the context of a broader examination of Bristol's rates, the Company, so long as it is permitted to recover carrying charges on these deferred costs, would be glad to pursue that approach. Indeed, as Bristol was preparing this Petition, a group of its customers filed a petition requesting that the Commission "conduct a survey of water usage for both commercial and residential customers to determine if fair and equitable rates are being levied to all parties."¹¹ To the extent that such petition is treated as a complaint pursuant to Section 89-i of the Public Service Law ("PSL"),¹² and is pursued under the procedures specified in Section 89-j of the PSL, consideration of the requested deferral in the context of such broader inquiry regarding rates may be the most efficient way to proceed.

¹⁰ Although year-end financial statements for 2016 are not expected to be available until March 2017, there is no reason to anticipate that they will show the Company to be earning anything even close to its allowed rate of return.

¹¹ Matter 17-0012, *Complaint of Property Owners and Customers of the Bristol Water-Works Corporation to Conduct a Survey of Water Usage for Both Commercial and Residential Customers*, filed January 3, 2017.

¹² Based on the caption given to the petition upon filing in the Commission's electronic document system, it would appear that such treatment is being afforded, at least preliminarily.

In any event, Bristol would welcome the opportunity to discuss with the Staff of the Department of Public Service how best to proceed.

IV. CONCLUSION

For the reasons stated above, Bristol respectfully requests that the Commission authorize the Company to defer for recovery all of the costs described above and in Appendix A hereto.

Respectfully submitted,



NIXON PEABODY LLP

Attorneys for Bristol Water-Works
Corporation

1300 Clinton Square

Rochester, New York 14604-1792

Telephone: (585) 263-1000

Facsimile: (585) 263-1600

E-mail: swidger@nixonpeabody.com

January 6, 2017

Stanley W. Widger, Jr.
Of Counsel

VERIFICATION

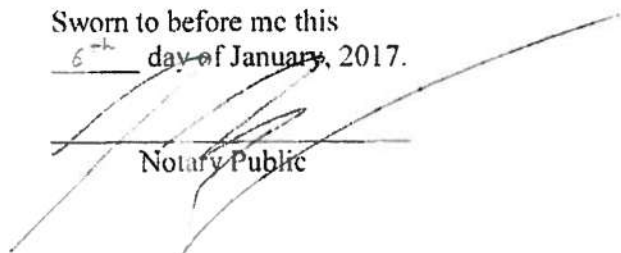
STATE OF NEW YORK)
 : SS.:
COUNTY OF ONTARIO)

Todd D. Cook, being duly sworn, deposes and says that he is President of Bristol Water-Works Corporation, the petitioner in this matter; that he has read the foregoing Petition and knows the contents thereof; that he believes the same to be true based on information and records available to him in his capacity as President.

JOHN BAGBY
Notary Public, State of New York
No. 01BA6216061
Qualified in Monroe County
Commission Expires Jan. 11, 2013


TODD D. COOK

Sworn to before me this
6th day of January, 2017.


Notary Public