

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 16, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-W-0928 - Petition of The Chaffee Water Works Company to Amend the
Current Surcharge.

ORDER AMENDING A LOAN AGREEMENT AND SURCHARGES

(Issued and Effective January 23, 2008)

BY THE COMMISSION:

INTRODUCTION

In Case 06-W-1160, we granted The Chaffee Water Works Company (Chaffee or the company) authority to borrow up to \$381,806 from the Drinking Water State Revolving Loan Fund (DWSRLF) as administered by the Environmental Facilities Corporation (EFC) to replace its aged water system.¹ At that time, the estimated total construction cost of the water system was \$626,368 for which Chaffee was eligible to receive a \$381,806 interest-free 30-year loan and a hardship grant of \$244,562. We also

¹ Case 06-W-1160, Petition of The Chaffee Water Works Company to Borrow up to \$381,806 from the Drinking Water State Revolving Loan Fund to Finance System Improvements and to Surcharge Customers to Repay the Principal Amount of the Loan, Order Approving the Loan Agreement and Surcharges (Issued and Effective May 17, 2007).

authorized Chaffee to assess a \$143 per equivalent dwelling unit (EDU)² per year (\$35.75 per quarter) surcharge for an annual surcharge of \$12,727 to repay the loan.

On September 14, 2007, the company petitioned to amend our May 17th Order to increase the amount of the loan and the annual surcharge. According to the company, it must now borrow \$555,438 and charge an annual surcharge of \$18,515 due to new project cost estimates. Additionally, pursuant to Public Service Law (PSL) §89-c(10)(b) and 16 NYCRR §720-8.1, the company requests a waiver of the provisions requiring newspaper publication of the proposed financing and surcharge.

We approve the company's petition to amend our Order in Case 06-W-1160 and authorize it to borrow \$555,438 and surcharge its customers \$18,515 annually. We direct the company to file a surcharge statement in the form attached as Appendix A with an effective date of February 1, 2008.

We also approve the company's request for a waiver of the provisions in the PSL and NYCRR that require newspaper publication of the proposed financing and surcharge. Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking related to this matter was published in the State Register on October 10, 2007. The SAPA comment period expired on November 24, 2007. No comments were received.

ENVIRONMENTAL QUALITY REVIEW

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

² Chaffee provides flat rate water service to 82 customers in the Hamlet of Chaffee, Town of Sardinia, in Erie County. The company has 89 EDUs, consisting of 71 single family houses, 4 small commercial customers and 14 apartments in seven separate apartment houses. The landlords/customers of the 7 apartment houses will pay 14 separate surcharges.

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

The proposed action before us is: a request from Chaffee for an increase in the amount of the loan; authorization to enter into a loan agreement with the EFC; and approval to commence a capital improvement surcharge to its customers in order to obtain a DWSRLF loan and grant to replace its aged water system. In addition to our approval of the proposed actions, the company must also acquire all necessary permits and approvals from various state and local agencies prior to commencing construction. The Erie County Department of Health (County Health), the New York State Department of Health (NYSDOH) (approval of the water supply system design), the New York State Department of Transportation (NYSDOT) (a right-of-way crossing permit for New York Route 16), the EFC (loan agreement) and possibly the Town of Sardinia (site plan review) must review and approve the company's plan to replace its system.

According to Chaffee, the loan increase is due to a low estimate of the length of the water main to be replaced and the attendant increase in the costs of installation. Instead of 5500 lineal feet, the engineers, when designing the water system, determined that 7500 lineal feet would be installed. The additional 2000 lineal feet is located within the existing water supply footprint that was reviewed in the field by New York State Department of Public Service Staff (Staff) prior to our May 16, 2007 Order. At the time that we issued the Order, the Erie County Department of Environment and Planning prepared a SEQRA Long Form EAF Part I and made a Solicitation for Lead Agency Status. In conjunction with the water system replacement, the County Department intends to replace approximately 1850 lineal feet of sidewalk in the Hamlet of Chaffee. The County Department found the project was consistent with the land use and development goals for the Hamlet of Chaffee as set forth in the Town of Sardinia 2003 Comprehensive Plan. The NYS Office of Parks, Recreation, and Historic Preservation after reviewing the project, determined that the project will have "No Effect" on cultural resources in, or eligible for inclusion in, the National Register for Historic Places.

Erie County issued a Notice of Determination of Non-Significance, Negative Declaration (Negative Declaration) on June 19, 2007. No significant adverse

effects on aesthetics, agricultural (land uses), archaeological, historic, or other natural wetlands or streams or cultural resources are expected. According to 6 NYCRR Section 617.6(b)(3)(iii), the county's issuance of the Negative Declaration is binding on the Commission as an involved agency.

The proposed action before us continues not to meet the definition of the Type 1 or Type 2 actions contained in 6 NYCRR §§617.4, 617.5, and 16 NYCRR §7.2, and is classified as an "unlisted" action for SEQRA review purposes.⁴ After reviewing Erie County's EAF and associated documentation, Staff concluded, and we agree, based upon the criteria for determining significance listed in 6 NYCRR §617.7(c), that the authorization: to increase the amount of the loan; to enter into a loan agreement with the EFC; and to commence the issuance of a surcharge to be in the public interest, and that these actions would not result in significant adverse environmental impacts. We adopt a negative declaration pursuant to SEQRA.⁵ A copy of the Notice of Determination of Non-Significance for this unlisted action is attached as Appendix B.

BACKGROUND

Reason for Increased Cost

Chaffee's water system, which was initially installed in 1896, has exceeded its design life and has severely deteriorated. Due to the unacceptable condition of the water system, the Erie County Department of Health is requiring Chaffee to replace the water system with a new system meeting current design standards.

In Case 06-W-1160, Chaffee estimated that the new water system would cost \$626,368 and asserted that the project was eligible for an DWSRLF grant of \$244,562 and a \$381,806 30 year interest-free loan. All the loan funds must be used before the company may access the grant money. In that case, we determined that replacing the water system was necessary for Chaffee to provide safe and adequate service to its customers and authorized the company to borrow the \$381,806 in the form

⁴ 6 NYCRR §617.2(ak).

⁵ 6 NYCRR §617.12.

of a 30 year interest-free loan. We also authorized the company to file DWSRLF Capital Improvement Surcharge Statement No. 1 containing a quarterly surcharge of \$35.75 to recover \$12,727 annually to repay the loan.

On September 14, 2007, Chaffee filed a petition seeking to amend our Order in Case 06-W-1160 and authorize the company to borrow \$555,438 from the DWSRLF. Additionally, the company seeks to increase the annual customer surcharge associated with repaying the loan from \$12,727, as approved by us in Case 06-W-1160, to \$18,515. Chaffee asserts that it needs to borrow additional funds from the EFC due to changes in cost estimates, which have increased the cost of replacing its water system from \$626,368 to \$800,000.

Following the issuance of the Commission's Order on May 17, 2007 in Case 06-W-1160, the company retained the services of an engineer who prepared a report on the cost of replacing the system. The new estimated construction cost of the project is \$800,000, which is \$173,632 more than the original estimate of \$626,368. Based on the new estimate, \$237,000 is required to install 5,500 feet of 6-inch diameter pipe. The original estimate included \$137,500 as the cost to install 5,500 feet of 4-inch diameter pipe. The company, therefore, needs an additional \$99,500 for 6-inch diameter pipe. The company claims that it also needs \$70,000 to install an additional 2,000 feet of 2-inch diameter pipe because it underestimated the actual length of pipe to be installed, due to a discrepancy between the length of pipe that was shown on an old map of the system and the actual length of pipe in the system as measured by the engineer. The balance of the increase in estimated construction costs (\$4,132) is due to other increased cost estimates for the project, including the cost to install meters.

DISCUSSION AND CONCLUSION

Pursuant to PSL §89-f, construction of a new water system is a major capital project for which debt financing is allowed. As the project costs have increased and the project is necessary to maintain the provision of safe and adequate service, we approve Chaffee's application to secure additional financing through the DWSRLF and, therefore, amend our May 17, 2007 Order to allow the company to borrow \$555,438 and

to surcharge customers \$18,515 annually. All other terms of the May 17th Order shall remain in effect.

Customer Notification

The company initially notified its customers of the proposed financing and related surcharge as authorized in Case 06-W-1160 through individual letters to customers, a customer meeting and a bill insert. In the December 2007 water billings, the company notified its customers that it is seeking Commission approval to increase the original loan amount of \$381,806 to \$555,438 and increase the customer surcharge from \$35.75 to \$52.00 per quarter due to the increase in estimated construction costs. Based on this notification, the company requests a waiver of the newspaper publication requirement.

We find that the company has adequately complied with the notification requirements and grant the request for a waiver of the newspaper publication requirements found in PSL §89-c(10)(b) and 16 NYCRR §720-8.1. To apprise customers of the Commission's determination in this case, Chaffee is directed to notify its customers following the effective date of this order, but by no later than February 15, 2008.

The Commission orders:

1. The Chaffee Water Works Company is authorized to enter into a loan agreement with the Environmental Facilities Corporation for an amount up to \$555,438 to rebuild its system and in order to obtain a DWSRLF loan and grant;
2. The Chaffee Water Works Company is authorized to file DWSRLF Capital Improvement Surcharge - Statement No. 2, which will supersede Statement No. 1, to become effective, on one day's notice, on or after February 1, 2008;
3. The Chaffee Water Works Company is directed to notify its customers individually in writing, no later than February 15, 2008, of the Commission's decision and file a copy of the notification with the Secretary to the Commission by February 28, 2008, unless otherwise directed by the Secretary.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

PSC NO: 2 WATER STATEMENT TYPE: SURC
COMPANY: The Chaffee Water Works Company
INITIAL EFFECTIVE DATE: February 1, 2008

DWSRLF CAPITAL IMPROVEMENT SURCHARGE

STATEMENT NO. 2

The Chaffee Water Works Company is authorized to surcharge the bills of all its customers, based on equivalent dwelling units, quarterly for a 30 year period, to repay an Environmental Facilities Corporation (EFC) loan of \$555,438 used to cover part of the costs of the replacement of its water system, estimated to cost \$800,000 which includes a grant amount of \$244,562 not subject to the surcharge.

The surcharge will be adjusted to reflect the actual costs of financing and all surcharges will be placed in a separate interest bearing account.

The company is authorized to collect a levelized surcharge over the term of the EFC loan effective on February 1, 2008. If the company experiences any under/over collections or changes in the levelized annual loan payments and associated charges required, it will file a new surcharge statement to become effective February 1 of the following year. The calculation of the surcharge for all succeeding periods is shown below:

Annual debt service funding required: \$18,515

Prior period under (over) recovery \$_____

Total estimated funding required during the
next year \$_____

Quarterly surcharge: \$52.00

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 Water Rates Staff of the New York State 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: Rodney C. Franz, President, 13419 Allen Road, Chaffee, NY 14030
(Name of Officer, Title, Address)

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PUBLIC SERVICE COMMISSION

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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 The Chaffee Water Works Company to borrow up to \$555,438 from the Drinking Water State Revolving Loan Fund 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