

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-020

HAMPSTEAD AREA WATER COMPANY, INC.

Request for Step II Adjustment

**Order *Nisi* Approving Recovery of Step Expenses and Granting Motion for
Confidential Treatment**

ORDER NO. 26,963

March 12, 2024

In this order, the Commission authorizes Hampstead Area Water Company Inc. (HAWC or the Company) to recover expenses related to the Step I and Step II adjustment proceeding in the amount of \$61,096.14 through a monthly surcharge of \$3.86 per customer charged over a period of 4 months.

HAWC's petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-020.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

On November 8, 2023, by Order No. 26,902, the Commission approved, after hearing, a partially assented to settlement agreement establishing a step increase in revenues for HAWC. This was the second and final step increase granted by the Commission for improvements made by HAWC which was the subject of Docket DW 20-117 and this docket.

By procedural order of December 20, 2023, the Commission accepted the recommendation of the settling parties to recover expenses incurred in obtaining approval of Step I and Step II. These expenses were contemplated by the parties in the

settlement agreements for Step I and Step II rates. The Commission has previously authorized rate case expenses incurred in the underlying request for change in permanent rates docket, Docket No. DW 20-117, in the amount of \$322,775.30. *See* Order No. 26,718 (November 3, 2022).

On December 7, 2023, HAWC submitted its proposal to recover \$65,987 in step expenses through a surcharge of \$3.82 per customer to be assessed over 4 monthly bills. In support of its request, HAWC submitted the underlying invoices supporting its request. In conjunction with its request for step expenses, HAWC filed a motion for confidential treatment.

On March 1, 2024, the DOE filed its technical statement of Utility Analyst Anthony Leone. The DOE noted that during discovery HAWC recalculated total expenses to be \$69,452.66. Of the \$69,452.66, HAWC asserted \$26,835.89 was attributed to the Step I proceeding and \$42,616.77 was attributed to the Step II proceeding. *See* March 1, 2024 technical statement at 3.

During discovery, the Company removed the following expenses:

1. Expenses incurred by the Company but not related to either Step I or Step II of \$24.05;
2. Expenses incurred by the Company related to responding to DOE Audit requests of \$2,745.78;
3. Expenses incurred by the Company totaling \$4,277.17 ($\$3,590.80 + \$571.88 + \114.49) relative to Step I but incurred after August 16, 2023; and
4. Expenses incurred to date by the Company relative to its "Motion to Recover Lost Step I Revenue during 65 Day Suspension of Order No. 26,809 in the amount of \$1,309.52 in Docket No. DW 20-117.

See Id. The resulting recoverable step expenses totaled \$61,096.14. The DOE recommended that recovery of the expenses occur over 4 months, resulting in a proposed surcharge of \$3.68 per month commencing after the conclusion of the previously approved rate case expenses. *See* Order No. 26,718 (November 3, 2022) in Docket No. DW 20-117, at 9, which authorized the recovery of permanent rate case expenses through a \$4.37 monthly surcharge over 18 months.

The technical statement indicates that all parties besides intervenor Karen Steele assent to the recoupment of the step expenses in the amount of \$61,096.14.

II. MOTION FOR CONFIDENTIAL TREATMENT

In its motion, HAWC requests confidential treatment of legal invoices. HAWC asserts that these invoices are exempt from disclosure because they contain internal personal practices and confidential information and are protected under the attorney-client privilege or the attorney work product doctrine.

III. COMMISSION ANALYSIS

Step Expenses

In its order of December 20, 2023, the Commission acknowledged that it had historically approved expenses attributed to step proceedings for small water utilities. Further, the Commission acknowledged that it had provided an implied waiver of N.H. Code Admin. Rules Puc Chapter 1900 by authorizing the submission of HAWC's expenses for Step I and Step II in its final order on the Step I settlement. Given the December 20, 2023 order, the Commission is reviewing the Step expenses pursuant to the criteria of Puc Chapter 1900.

The Commission treats prudently incurred rate case expenses as a legitimate cost of service appropriate for recovery through rates, consistent with N.H. Code Admin. Rules Puc Chapter 1900. Puc 1904.02 sets forth the criteria for determining

allowed rate case expenses, including that such expenses are consistent with the Chapter 1900 requirements, the costs are actual, known, and measurable expenses associated with a full rate case proceeding, and that recovery of the expenses is just, reasonable, and in the public interest, pursuant to the standards of RSA 378:7 *See, e.g., Hampstead Area Water Company, Inc.*, Order No. 26,185 (October 30, 2018), at 4.

The Commission has reviewed the request for step expenses, the Company's responses to data requests from the DOE, as well as the technical statement provided by the DOE. Furthermore, the Commission notes that during the discovery process, the Company voluntarily reduced its initial request and its proposed timeframe for repayment after consultation with the DOE.

The Commission finds that HAWC has adequately supported, and supplemented where required, its request with expense documentation and thorough responses to inquiries by the DOE. The Commission also finds the reduction made during discovery by HAWC of its originally submitted expenses is in the public interest and agrees that commencing the recovery period after the recoupment of the rate case expenses authorized by Order 26,718 (November 3, 2022) will minimize the financial burden on HAWC's customer base. Accordingly, the Commission finds HAWC's request to recover its step expenses in the amount of \$61,096.14, which when divided by the customer base of 4146 yields a surcharge of \$3.68 per month for 4 months, is just and reasonable pursuant to RSA 378:7.

Finally, the Commission notes that per the DOE, Ms. Steele does not assent to the proposed approval of step expenses. However, no further explanation of her objection was filed. Ms. Steele is a party to this matter and has received copies of all pleadings and discovery. Ms. Steele has not filed a substantive objection to either HAWC's December 7, 2023 request for expenses or the March 1, 2024 position

statement of the DOE. The Commission notes that Ms. Steele's interest in these proceedings is limited to that of a resident of the Town of Atkinson. Ms. Steele is not a ratepayer of HAWC. The Town of Atkinson has assented to the proposed step expenses. The Commission's approval of Ms. Steele's motion to intervene in this matter, as well as the Permanent Rate/Step I docket DW 20-117, instructed Ms. Steele to work jointly with the Town of Atkinson while participating in the docket. *See* April 9, 2021 Secretarial Letter in Docket No. DW 20-117. As Ms. Steele's interest in step related expenses is limited to her general interest as a taxpayer in the Town of Atkinson, and Atkinson has assented to the relief requested, and Ms. Steele has failed to file a substantive objection pursuant to Puc 203.07 (e), the Commission finds that approval of this request via an order *nisi* is consistent with Commission practice and procedure.

Motion for Confidential Treatment

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(IV) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. See Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." See *Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case HAWC seeks protection for information contained in its legal bills. HAWC argues that disclosure of the information contained in the legal billing is protected under RSA 91-A.

RSA 91-A:5, XII specifically exempt records protected under the attorney-client privilege or the attorney work product doctrine. HAWC's legal billing it seeks to remain confidential includes information that is protected under the attorney-client privilege. Because this document is exempt from disclosure, an analysis under RSA 91-A:5, IV

is unnecessary. It is found that the legal bills include attorney client work product and are therefore exempt.

Accordingly, pursuant to Puc 203.08(a), we grant HAWC's motions for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED *IN SI*, that subject to the effective date below, Hampstead Area Water Company, Inc. is authorized to recover \$61,096.14 in step expenses over a 4 month period through a monthly surcharge \$3.68 per customer to begin after recovery of the permanent rate case expenses previously authorized; and it is

FURTHER ORDERED that Hampstead Area Water Company, Inc. shall post a copy of this order on the Company's website within two business days of the date of this order, with an affidavit of publication to be filed with this office on or before March 14, 2024; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc.'s motion for confidential treatment is **GRANTED**; and it is

FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than March 22, 2024 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 2, 2024; and it is

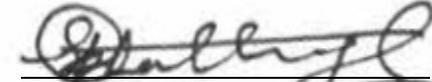
FURTHER ORDERED, that this order shall be effective April 11, 2024, unless the Hampstead Area Water Company, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Hampstead Area Water Company, Inc. shall file a compliance tariff with the Commission on or before April 21, 2024, in accordance with New Hampshire Code of Administrative Rules, Puc 1603.02(b).

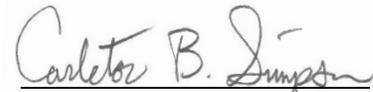
By Order of the Public Utilities Commission of New Hampshire this twelfth day of March, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-020

Printed: 3/12/2024

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