

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Docket No. DW 20-117

THE HAMPSTEAD AREA WATER COMPANY, INC.

**OBJECTION TO KAREN STEELE’S MOTION FOR REHEARING  
OF ORDER NO. 26,809**

NOW COMES, The Hampstead Area Water Company, Inc. (HAWC or The Company), and pursuant to Puc 203.04, 203.07, and 202.03, respectfully objects to Ms. Steele’s Motion for Rehearing of Order No. 26,809. The New Hampshire Public Utilities Commission (PUC or the Commission) should deny Ms. Steele’s motion because she already fully presented the same two “grievances” to the Commission—both at the hearing to approve a settlement agreement on permanent rates and also at the hearing to approve the settlement of Step I adjustments to permanent rates—and she fails to demonstrate how these “grievances” are either new evidence the Commission did not consider or overlooked, or that Order No. 26,809 is unlawful or unreasonable <sup>1</sup>. In support of this objection the Company states the following.

**I. PROCEDURAL HISTORY**

The Company filed a request to change its permanent rates in this docket. A thorough discovery process exceeding ten sets of data requests and technical sessions ensued, and the Company presented a cost-of-service study and expert supporting its request to change permanent rates which was examined by the New Hampshire Department of Energy’s (DOE) own cost of service expert. During this process the parties, other than Ms. Steele and the Town of Danville, agreed to a temporary change in rates that was approved by the Commission. Thereafter all parties other than Ms. Steele and the Town of Danville agreed to a comprehensive settlement on permanent rates including two future step increases.

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<sup>1</sup> The Office of the Consumer Advocate (OCA) filed a “Response” to Ms. Steele’s Motion for Rehearing. The Company notes the OCA joined in the settlement for both temporary rates and permanent rates, the later resulting in the Commission’s Order No. 26,635 which at the settlement hearing the OCA assisted Ms. Steele proffer her testimony in opposition to that settlement.

On May 11, 2022, a hearing on that settlement took place before the Commission. At that hearing Ms. Steele presented her objections, including testimony and exhibits arguing that the Company did not take all the water it was allocated in the Southern New Hampshire Interconnection Agreement.<sup>2</sup> These objections and her complete testimony were facilitated by counsel from the OCA. The OCA joined the proposed settlement as a settling party. The Commission approved the permanent rate settlement on June 2, 2022, by Order No. 26,635. In section V(C) of that Order, the Commission approved both a Step I and Step II step increase to permanent rates, subject to certain conditions the Company must meet including not to file for such step increases before enumerated dates, each step increase could not exceed agreed-to amounts, and all evidence supporting each step increase was subject to DOE audit review.

The Company filed for its Step I adjustment to rates pursuant to the timing required by Order No. 26,636, on September 1, 2022. After DOE staff completed its audit review and Step I discovery was completed, the PUC held a hearing to review a proposed settlement agreement on April 12, 2023. The Step I Settling Parties included the Company, the DOE, the Town of Atkinson, and the Town of Hampstead. Same as the previous permanent rate settlement hearing, Ms. Steele and the Town of Danville objected to the Step I settlement. The OCA chose to not take a position on the proposed Step I settlement.

The Company and the DOE testified during the hearing in support of the Step I Settlement provisions asserting those provisions were just and reasonable.<sup>3</sup> Over the Company's objections, Ms. Steele testified in opposition to the Step I settlement. Ms. Steele testified that the proposed Step I rate adjustments did not account for water supply that may have been made available through the "Southern Interconnect Agreement" project.<sup>4</sup> Her testimony included arguing that the failure of the Company to meet its monthly allocation is evidence that the \$892,500 MSDC fee is not used and useful.<sup>5</sup> Further, one of the two prehearing exhibits Ms. Steele filed was the Southern New Hampshire Interconnection Agreement. The

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<sup>2</sup> DW 20-117 Permanent Rate Hearing Pages 75-85

<sup>3</sup> DW 20-117 Order No. 26,809 page 7.

<sup>4</sup> Id. at page 7.

<sup>5</sup> Step I hearing Transcript at page 71, line 8 through page 72, line 17.

Commission accepted Ms. Steele's exhibits and granted them "the weight they deserve."<sup>6</sup> The Town of Danville and the OCA did not participate at the hearing on April 12, 2023, or file any prehearing testimony or exhibits.<sup>7</sup> On April 28, 2023, the Commission issued Order No. 26,809 approving the proposed Step I Settlement.<sup>8</sup>

On May 15, 2023, Ms. Steele filed a motion for rehearing of Order No. 26,809 citing two "grievances": (1) the MSDC spend of \$892,500.00 is not used and useful and thus HAWC should not be allowed to use that full spend amount as justification to increase ratepayers' permanent rates as requested, and (2) HAWC is not honoring their agreement to purchase and sell 250,000 gallons of water per day from MWW before selling "Atkinson's" groundwater.<sup>9</sup> Ms. Steele did not argue that either of these "grievances" were based on new evidence that was unavailable at the time of the hearing, or that evidence was overlooked or misconstrued.

## **II. STANDARD OF REVIEW**

Pursuant to RSA 541:3, "within 30 days after any order or decision has been made by the Commission, any party to the action or proceeding before the Commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the Commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion." Additionally, the standard for granting a motion for rehearing pursuant to RSA 541:3 and RSA 541:4 "requires the [moving party] to demonstrate that the order is unlawful or unreasonable. Good cause for rehearing may be shown by new evidence that was unavailable at the time or that evidence was overlooked or misconstrued."<sup>10</sup>

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<sup>6</sup> Step I hearing Transcript at page 106, lines 21-23.

<sup>7</sup> Id. at page 4.

<sup>8</sup> Ids. at page 8.

<sup>9</sup> The Company does not agree with the characterization that ground water belongs to a particular town. The Company is permitted by the NHDES to pump ground water from its wells including those in Atkinson. Water does not cease to flow at town limits.

<sup>10</sup> City of Nashua, RSA 38 Proceeding in re Pennichuck Water Works, DW 04-048, Order Denying Motions for Rehearing (No. 24,948, March 13, 2009) slip opinion at p. 19-20.

A motion for rehearing is not a procedural second bite at the apple. To that end, “[a] successful motion must establish ‘good reason’ by showing that there are matters that the Commission ‘overlooked or mistakenly conceived in the original decision, or by presenting new evidence that was ‘unavailable prior to the issuance of the underlying decision.’”<sup>11</sup> Further, “[a] successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.”<sup>12</sup>

*Dumais v. State Personnel Comm’n*, 118 NH 309 (1978), cited by Ms. Steele in her motion, held that to grant a rehearing requires newly discovered evidence or that the Commission may have received evidence in another hearing that might have been used improperly in the subject proceedings. Ms. Steele’s motion does not provide either of these. Relatedly, in *Appeal of Gas Service, Inc.* 121 NH 797 (1981) the court held that the Petitioner failed to explain why the “new evidence” [it] wished to present at a hearing could not have been presented at the original hearing and because of this, the appeal was dismissed.

### III. ARGUMENT

#### A. USED AND USEFUL ARGUMENT

The first issue Ms. Steele raises is that the \$892,500 MSDC spend is not used and useful and thus HAWC should not recover this full amount through increased permanent rates. This is not a newly discovered issue, nor has this issue been overlooked or misconstrued. Ms. Steele raised this identical issue at the settlement hearing for Step I on April 12, 2023.<sup>13</sup> Specifically, she argued:

“[a] major element of the Step I increase is the MSDC, which is the \$892,500 that was paid to Merrimack Source Development Charge. And, so, I believe that the data I have presented is indeed relevant to showing that cost – that spend is not used and useful, and, therefore, should be reduced.”<sup>14</sup>

Additionally, in Order No. 26,809 the Commission held: “Exhibits 21 and 22 submitted by Intervenor Karen Steele are **ADMITTED** to the record in this docket for informational purposes”<sup>15</sup> The Commission further held these exhibits are “given the weight they deserve for purposes of a decision on the Step I adjustment

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<sup>11</sup> *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No 26,087 at 3-4 (Dec. 18, 2017)

<sup>12</sup> *Id.*

<sup>13</sup> DW 20-117 Step I Hearing Transcript Page 59 Lines 20 through Page 59 Line 8.

<sup>14</sup> DW 20-117 Step I Hearing Transcript Page 14 lines 19 through Page 15 Line 1.

<sup>15</sup> DW 20-117 Order No. 26,809 page 8

proposed in the Step I settlement.”<sup>16</sup> Exhibit 21 was the Pipeline Water Consumption from NH DES OneStop with an additional page authored by Karen Steele showing the amount of water HAWC purchased and Exhibit 22 was the Southern New Hampshire Interconnection Agreement. DOE also examined Ms. Steele’s exhibits<sup>17</sup> In addition, Ms. Steele also raised these same arguments during the Permanent Rate settlement hearing on May 11, 2022. During the morning session, she cross-examined the Company’s cost of service witness, Dave Fox, regarding the “pipeline” not benefiting Atkinson customers.<sup>18</sup>

Moreover, Ms. Steele argues the Company is otherwise “selling Atkinson’s groundwater to Plaistow...” Steele Motion at pg. 4. This argument is flawed because Atkinson does not own the groundwater. The Company was duly issued permits by the New Hampshire Department of Environmental Services (NH DES) for each of its groundwater wells and all of them are in good standing as of the date of this filing. See, e.g., RSA 485-C. On this point, the Company refers to the NH DES Fact Sheet, DWGB-22-13, which answers the question ‘Who owns groundwater?’ with “it’s a shared resource...[and] it makes sense that the state is the entity that can regulate or restrict groundwater use.” A copy of this Fact Sheet is attached as Exhibit A.

Accordingly, Ms. Steele fails to show good cause sufficient to grant her motion for a rehearing because information was available and fully presented and witnesses were cross examined at the hearing on April 12, 2023. Ms. Steele has also failed to demonstrate the evidence was overlooked or misconstrued. To the contrary, the Commission allowed Ms. Steele’s testimony and exhibits into the record. Finally, Ms. Steele failed to present new evidence that was not available at the time of the hearing. In line with the *Liberty Utilities* case holding, Ms. Steele is simply restating her prior arguments and seeking a different result. For these reasons, the Commission should deny Ms. Steele a third bite at the proverbial apple on this same argument.

## **B. SOUTHERN INTERCONNECT AGREEMENT**

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<sup>16</sup> DW 20-117 Order No. 26,809 page 7.

<sup>17</sup> DW 20-117 Step I Hearing Transcript Page 13 lines 3 through 13.

<sup>18</sup> DW 20-117 Permanent Rate Hearing Morning Session Transcript Page 91 line 17 through Page 92 line 18

The second issue Ms. Steele raises to seek rehearing is that HAWC is not honoring their agreement to purchase and sell 250,000 gallons of water per day from MWW before selling “Atkinson’s” groundwater. Ms. Steele discussed this Agreement during her opening statement at the April 12, 2023, hearing.<sup>19</sup> At this hearing Ms. Steele went into great detail regarding the parties’ obligations under the agreement and what her interpretation of the NHDES numbers meant relative to whether it was used and useful.<sup>20</sup> On this point the Commissioners questioned Ms. Steele about these arguments.<sup>21</sup> The Company noted that this was not the first time Ms. Steele raised these arguments, she did so at the Permanent Rates Hearing.<sup>22</sup>

At the April 12, 2023, hearing, the Commission summarized Ms. Steele’s arguments about the Southern New Hampshire Interconnect Agreement as being: “informative; however, we do not base our decision here on the efficacy of HAWC’s participation in the Interconnect Project. Rather, our decision is based on the testimony provided by the Company’s witnesses, and by [Department of Energy] DOE’s witnesses, in support of the need for an adjustment in general rates, as presented in the Step I Settlement.”

<sup>23</sup> Ms. Steele’s Exhibit No. 22 is the Southern New Hampshire Regional Water Interconnection Project Agreement, and Commission admitted into the docket. Thus, Ms. Steele fails to demonstrate good cause for a rehearing based upon this issue because this issue was thoroughly examined by the parties, including the Commission, at the hearing. This evidence was not overlooked or misconstrued because it was admitted into the docket, nor has Ms. Steele presented newly discovered evidence that was not known or available at the time of the hearing. Rather, Ms. Steele does not agree with Order No. 26,809 and hopes to reargue these same points to the Commission for a third time. Consistent with the holding in the *Liberty Utilities* case, this is not a proper justification to grant a rehearing. To allow Ms. Steele’s motion for rehearing would run counter to the standard of review governing such motions.

### **C. TOWN OF DANVILLE “SUPPORT” OF MS. STEELE’S MOTION**

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<sup>19</sup> DW 20-117 Step I Hearing Transcript Page 56 Lines 18 through Page 57 line 15, and Page 58 lines 13 through Page 59 Line 2.

<sup>20</sup> DW 20-117 Step I Hearing Transcript Page 59 lines 12 through Page 59 Line 8.

<sup>21</sup> DW 20-117 Step I Hearing Transcript Page 71 Lines 23 through Page 72 line 17.

<sup>22</sup> DW 20-117 Step I Hearing Transcript Page 80 Lines 2-20

<sup>23</sup> DW 20-117 Order No. 26,809 page 7.

The Company objects to the Town of Danville’s “Support” for Ms. Steele’s Motion for Rehearing because the Town does not raise any additional or unique issues aside from what Ms. Steele raised in her motion and thus has not shown good cause for the Commission to grant Ms. Steele’s Motion for Rehearing. Additionally, the Town of Danville chose not to participate in the Step I proceedings and was not present at the Step I settlement hearing on April 12, 2023, did not file any prehearing testimony or exhibits, and has not filed anything more substantive than an email in support of Ms. Steele’s Motion.<sup>24</sup>

**D. OCA’s RESPONSE TO MS. STEELE’S MOTION FOR REHEARING**

The Office of the Consumer Advocate (OCA) filed a Response in support of Ms. Steele’s Motion for Rehearing on May 16, 2023. In it the OCA characterizes the Commission as simply ignoring Ms. Steele’s used and useful argument. The Company disagrees. As outlined previously, the Commission allowed Ms. Steele to testify over the objection of the Company, questioned Ms. Steele following her testimony on the two issues she now seeks as the basis for rehearing, and admitted her exhibits into evidence. The Commission did not issue an immediate order for the Step I adjustment, but instead issued its decision sixteen days later.

The Commission is well within its discretion to give whatever weight it deems appropriate to testimony and exhibits it receives and noted as much when after allowing Ms. Steele’s exhibits into the docket stated they would be given the weight they deserve. The fact that OCA does not agree with the Commissions’ findings, or what weight the Commission gave Ms. Steele’s exhibits is not a basis for a rehearing.

When Ms. Steele first made these arguments at the hearing on Permanent Rates on May 11, 2022, OCA attorney, Julianne M. Desmet, Esq., directed Ms. Steele in her testimony because she was *pro se*.<sup>25</sup> Ms. Steele’s testimony included arguments about the Company’s involvement with the “pipeline”. The OCA fails to explain how it now believes Ms. Steele’s arguments were not considered by the Commission given that it was the OCA’s counsel who assisted Ms. Steele present her testimony on these exact issues.

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<sup>24</sup> DW 20-117 Procedural Order RE: February 22, 2023 Hearing and Procedural Order Re: Request to Reschedule Hearing

<sup>25</sup> DW 20-117 Permanent Rate Transcript 5-11-22 page 33

The OCA was a settling party and signed on to the settlement agreements presented to, and later approved by, the Commission for both the Temporary and Permanent Rates Settlement Agreements.<sup>26</sup> The Commission-approved permanent rates settlement agreement set forth both Step I and Step II rate adjustments, and Order No. 26,635 set strict parameters for these adjustments, which the Company met. While RSA 541:3 provides any party may file a motion for rehearing, the OCA's support for Ms. Steele's motion appears to contradict its previous agreement to join the permanent rate settlement that outlined the parameters for a Step I rate increase. Simply put, the OCA does not show how the Company did not follow the Step I parameters approved by the Commission in Order No. 26,635.

#### IV. CONCLUSION

For these reasons, Ms. Steele's motion should be denied.

WHEREFORE, HAWC respectfully requests the Commission:

- A. Deny Ms. Steele's Motion for Rehearing on Order No. 26,809; and
- B. Such further relief as the Commission deems just and equitable.

Respectfully submitted,

THE HAMPSTEAD AREA WATER COMPANY, INC.  
By its Attorney,

*/s/ Anthony S. Augeri*

Date: May 22, 2023

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<sup>26</sup> DW 20-117 Exhibit #1 & #3 –The Settlement Agreement with Attachments



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been emailed this 22<sup>nd</sup> day of May 2023 to the Docket Related Service List for this docket.

*/s/ Anthony S. Augeri*

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Anthony S. Augeri