

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

The Hampstead Area Water Company, Inc.

Request for Change In Rates

Docket No. DW 20-117

**DEPARTMENT OF ENERGY’S OBJECTION TO HAWC’S “MOTION TO RECOVER
LOST STEP REVENUE DURING 65-DAY SUSPENSION OF ORDER NO. 26,809”**

NOW COMES the New Hampshire Department of Energy (“DOE” or “Department”) and objects to Hampstead Area Water Company’s (“HAWC” or “the Company”) “Motion to Recover Lost Step Revenue During 65 Day Suspension of Order No. 26,809,” because: HAWC’s motion is untimely; HAWC has not cited authority permitting recovery; as a policy matter consumers ought not be asked to insure HAWC from risks of standard legal process; and DOE has questions about HAWC’s calculation of the alleged loss of \$55,615.64, about a proposed two-month time frame for recovery, and about HAWC’s proposal to recover funds through a uniform surcharge to all customers, irrespective of individual customer ccf consumption and seasonality. *See* NH Code Admin Rules Puc 203.07 (e). In support the DOE states as follows.

I. PROCEDURAL BACKGROUND

1. The Commission approved a permanent rate settlement agreement in this docket. *See* Order No. 26,635 (June 2, 2022).¹ The settlement on permanent rates provided for a Step I and a Step II increase in permanent rates, to be “primarily” based on defined components and subject to DOE review (including audit) and standard adjudication. The settlement on permanent rates

¹ Order No. 26,635 was subsequently revised on June 10, 2022 and July 20, 2022.

did not guarantee HAWC that it would receive step increases, or that the step increases would be implemented by a date certain.

2. The settlement on permanent rates provided that HAWC could file Step I and Step II together. HAWC filed its request for a Step I increase on September, 1, 2022. The Company filed a petition requesting a Step II increase on March 17, 2023. *See generally* Dkts. No. DW 20-117 and DW No. 23-020.

3. On April 28, 2023, the Commission approved the pending settlement on the proposed Step I rate adjustment. *See* Order No. 26,809.

4. On May 15, 2023, *before* the Commission's Order No. 26,809 could become a final order on the merits, i.e., within the standard 30-day appeal period, Karen Steele filed a motion for rehearing. *See* Steele Mot. for Rehearing (May 15, 2023); RSA 541:3 (motions for rehearing must be filed within 30 days after any order or decision of the commission); RSA 541:6 (30 days for appeal to the NH Supreme Court after application for rehearing is denied or, if granted, then within thirty days after the decision on such rehearing). Ms. Steele basically asked the Commission to re-open the hearing consistent with RSA 365:21 to address issues Ms. Steele felt the existing order had overlooked. *See* RSA 365:21 (“ . . . Notwithstanding RSA 541:5, upon the filing of a motion for rehearing, the commission shall within 30 days either grant or deny the motion or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.”)

5. The Town of Danville filed a letter in support of Ms. Steele's motion. The Office of the Consumer Advocate (OCA) filed a brief in support of Ms. Steele's motion for rehearing (May 16, 2023) and an additional position statement (May 22, 2023). On May 22, 2023, HAWC objected to Ms. Steele's Motion.

6. On June 14, 2023, the Commission issued Order No. 26,846, suspending Order No. 26,809 “effective immediately,” in order to “consider the issues raised in these filings.” *See* Order No. 26,846; Procedural Order Re: Order of Suspension (June 30, 2023); HAWC Motion Request for Status (August 2, 2023); Procedural Order Re; HAWC Request for Status Update (August 11, 2023). On August 16, 2023, the Commission denied the relief Ms. Steele requested in her motion for rehearing and “reaffirm[ed]” the Commission’s approval of “the recovery of the Merrimack Source Development Charge fee in Step I rates pursuant to the terms of Order No. 26,809. *See* Order No. 26,874 (August 16, 2023). The Commission explicitly lifted the suspension of the Step I rate adjustment on August 18, 2023. *See* HAWC Request for Clarification (August 18, 2023); Procedural Order Re: Request for Clarification (August 18, 2023).

II. HAWC’S MOTION TO RECOVER “LOST” STEP I REVENUE IMPROPERLY ASSUMES SOMETHING WAS “LOST” AND THE MOTION WAS UNTIMELY FILED

7. The Company is seeking to recover revenue it identifies as “lost revenue” that was presumably “lost” during the suspension of Order No. 26,809 (April 28, 2023) (approving settlement agreement and authorizing the imposition of Step I rates). However, Order No. 26,809 was not a final order on the merits when, within the standard thirty-day period, a motion for reconsideration was filed. The Commission subsequently issued Order No. 26,846 (June 14, 2023) suspending Order No. 26,809. The suspension itself denoted that HAWC was not legally entitled to collect the previously approved rates from the date of the suspension unless and until the suspension was lifted. Accordingly, nothing was “lost.”

8. Assuming for the sake of argument that HAWC “lost” the incremental revenue associated with the higher Step I rates, HAWC’s opportunity to seek to recover of that “lost” revenue

stemming from the Commission’s initial approval of Step 1 rates, subsequent suspension, and then lifting of the suspension, has expired. The last Commission order addressing Step I rates was the order lifting the suspension, Order No. 26, 878 (August 16, 2023) and a “Procedural Order Re: Request for Clarification (August 18, 2023). Order No. 26,878 and the Procedural Order became final orders on the merits on September 15 and September 17 respectively. To the extent HAWC wished to expand or revise the relief provided, its motion to recover “lost revenue” ought to have been filed on or before September 17, 2023, when the order lifting the suspension became final. RSA 541:3, :6; see RSA 365:21; NH Admin Rule Puc 203.10 (rules regarding amendment to relief requested).

III HAWC HAS NOT IDENTIFIED AUTHORITY THAT PERMITS RECOVERY

9. HAWC’s motion does not identify any authority that would permit the relief the Company seeks. One cannot assume that because “RSA 541 is silent on the right of a utility to recover the deficiency of revenue during the time an order is suspended when a motion for rehearing is denied,” *see* HAWC Motion at 2, the relief sought is permissible. To the contrary, the standard rules of statutory construction require that neither administrative bodies nor courts add language the legislature did not see fit to include. *See In Re Guardianship of C.R.*, 174 N.H. 804, 807 (January 2022). When the legislature wished to authorize recovery as between temporary rates and permanent rates, it was able to do so in RSA 378:29. *See* RSA 378:29. There is no statute that permits, or in any way describes, the type of recovery HAWC seeks here.

10. HAWC’s “parade of horrors” is unsupported and mere conjecture. There is no reason to conclude that were the Commission to deny the relief HAWC requests, its order would “incentivize future motions for rehearing as a litigation tactic to cause public utilities to lose revenue otherwise authorized by the Commission.” *See* HAWC Mot. at 3. The Commission *itself* elected to suspend rates when it reviewed the motion for rehearing. Moreover, were there

to be a verified pattern of the use of motions for rehearing of the type HAWC describes, that could (and should) be handled in a separate docket.

IV RATE-PAYERS OUGHT NOT BE REQUIRED TO INSURE HAWC AGAINST RISKS LEGAL PROCESS ALLOWS

11. As explained above, the Administrative Procedures Act permits the filing of motions for rehearing, and the Commission is empowered to suspend rates. *See* RSA 365:21; RSA 541:3, :6. The relief HAWC seeks essentially asks consumers to insure HAWC against standard litigation risks. In a rainy wet year, the Company may experience diminished revenues; it must accept them. Given that parties in any docket may elect to exercise the right to seek reconsideration, the Company must accept the resulting diminished revenues, if any. As a policy matter, rate payers ought not be asked to essentially insure HAWC against this sort of standard litigation risk.

V. DOE HAS CONCERNS ABOUT HAWC'S CALCULATION OF \$55K IN "LOST REVENUE" AND ABOUT HAWC'S PROPOSED METHOD OF RECOVERY

12. In its motion to recover "lost revenue" the Company has proposed a uniform \$6.70 per month surcharge for each of its customers for a period of two months in order to recover what the Company asserts is "lost revenue" in the amount of \$ 55,615.64. *See* HAWC Mot. To Recover (Nov 17, 2023) at 3. As explained above, the DOE objects to HAWC's request for a number of reasons. However, in the event that the Commission decides HAWC is legally permitted to recover "lost revenue" the DOE has concerns with the Company's calculations and proposed method of recovery. *See* Attachment 1 (DOE Technical Statement of Anthony Leone). For example, as informed by discovery in this docket, the Company's billing system seems to have the ability to be modified to capture the data necessary as to seek recovery based upon each customer's actual, historical usage, rather than a per customer flat fee. *See* Attachment B (DOE

(Leone) Letter Dated September 30, 2022 para 2² and Company's response to DOE 8-4(c) and implicitly DOE 7-13 referenced therein).

13. In the opinion of the DOE, a tailored approach instead of a flat fee would likely be more appropriate here, assuming for the sake of argument that the Commission grants the relief HAWC seeks. In addition, it is DOE's experience that the Company's initial request is often more appropriately reduced and recovered over a longer period of time. *See Attachment B; Attachment A (Leone Technical Statement)*. Accordingly, if the Commission concludes, over DOE's objection, that HAWC is entitled to seek the "lost revenue" at issue, DOE asks the Commission to give the parties an opportunity to submit a proposed procedural schedule with time for DOE to conduct discovery and discuss a proper recovery framework for presentation to the Commission at a subsequent hearing.

VI. CONCLUSION

WHEREFORE, for the reasons identified above, the DOE respectfully asks the Commission to:

- A. DENY HAWC's Motion to Recover Lost Revenue because it was untimely filed.
- B. DENY HAWC's Motion because there is no legal authority providing for recovery and the Commission is authorized to suspend rates to consider a motion for rehearing
- C. DENY HAWC's Motion because rate payers are not required to insure HAWC against the standard risks of legal process;
- D. In the alternative, if the Commission concludes HAWC has identified the legal authority to recover "lost revenue" over DOE's objection, DIRECT the parties to develop a procedural schedule so that DOE can investigate HAWC's calculation and proposed method of recovery, to be reviewed in a future hearing; and
- E. GRANT such other and further relief as is reasonable and just.

Respectfully Submitted,

² The September 30, 2022 letter is available at the following link: [20-117 2022-09-30 NHDOE REPORT-RATE-CASE-EXPENSES.PDF](#)

New Hampshire Department of Energy
By its Attorney

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CERTIFICATE OF SERVICE

I hereby provide that a copy of this pleading was provide by electronic mail to the individuals included in the Commission's service list in this docket on this date, November, 27, 2023.

/s/ Mary E. Schwarzer

Mary E. Schwarzer