

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-184

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

Request for Change in Rates

Order Approving Permanent Rates Settlement

O R D E R N O. 26,659

July 29, 2022

In this order, the Commission approves a settlement agreement, subject to future review and approval of the subsequent step adjustment, by and among Aquarion Water Company of New Hampshire, Inc. (Aquarion, or the Company), the New Hampshire Department of Energy (DOE), the Office of the Consumer Advocate (OCA), and the Towns of Hampton and North Hampton (the Towns).

I. PROCEDURAL HISTORY

On December 18, 2020, Aquarion filed a petition for temporary and permanent rates (Petition) pursuant to RSA 378:27-28 requesting temporary rates to be set at existing rates and application of new permanent rates to be effective for service rendered on and after February 1, 2021. The Company's Petition was supported through testimonies by Donald J. Morrissey, John P. Walsh, Daniel R. Lawrence, Carl McMorran, Debra A. Szabo, Dylan W. D'Ascendis, Ned W. Allis, and John F. Guastella.

The Town of Hampton and the Town of North Hampton each submitted petitions to intervene in this proceeding.

A prehearing conference was held on March 10, 2021, at which the Towns' respective petitions to intervene were granted pursuant to Puc 203.17.

A hearing on temporary rates was held on June 9, 2021. On June 21, 2021, the Commission issued Order No. 26,488 approving temporary rates.

Rebuttal testimony was filed on March 2, 2022, by Josie A.M. Gage on behalf of OCA, and individually by Robyn J. Descoteau, Anthony J. Leone, Douglas W. Brogan, Donna H. Mullinax, and Mark E. Ellis on behalf of DOE. Also on March 2, 2022, individual direct testimonies were filed jointly by Bion C. Ostrander and by David M. Fox on behalf of the Towns.

On June 2, 2022, Aquarion filed a settlement agreement on permanent rates (Settlement Agreement) by and among Aquarion, DOE, OCA, and the Towns (together, the Settling Parties). A hearing on permanent rates and the Settlement Agreement was held on June 22, 2022.

Aquarion's initial Petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at: <https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-184.html>.

II. BACKGROUND

Aquarion is a public water utility serving customers in the towns of Hampton, North Hampton, Stratham, and Rye in Rockingham County; the town of Bretton Woods in Coös County; the town of Bow in Merrimack County; and the towns of Gilford and Belmont in Belknap County.

III. PETITION FOR CHANGE IN RATES

In its December 2020 Petition, Aquarion sought a permanent rate increase with respect to service rendered on or after February 1, 2021, and approval of an 8.15 percent overall rate of return, designed to yield an increase of \$1,373,351 in annual revenue above its pro forma revenues at present rates of \$7,616,793. The Petition further proposed an initial step adjustment (Step 1) in rates designed to yield an

increase of \$927,636 in annual revenue to recover costs associated with approximately \$5,840,981 of capital expenditures. The Petition proposed two additional step adjustments (Step 2 and Step 3) related to capital expenditures projected to be placed in service in 2022 and 2023, for requested revenue requirement increases of \$725,434 and \$463,790, respectively. The Company also proposed the creation of an inclining block rate for the Company's residential customers, cost recovery of the Customer Assistance and Fee Free Programs, implementation of a property tax reconciliation mechanism, and a revenue adjustment mechanism.

IV. SETTLEMENT AGREEMENT

The Settlement Agreement reached by the Company, DOE, OCA, and the Towns reflects the resolution of all issues to the reasonable satisfaction of the Settling Parties with respect to Aquarion's Petition for permanent rates in this docket. The agreed-upon terms for the resolution of those issues encompass an initial permanent rate adjustment (Permanent Rate Change) followed by a single step adjustment (Step Adjustment), as outlined below.

The Settlement Agreement proposed the following rate adjustments:

(1) a Permanent Rate Change for service rendered on or after Commission approval, designed to yield a total revenue decrease of \$305,227, reflecting expenses and plant investments through 2019; and

(2) a Step Adjustment to reflect an increase in revenue requirement not to exceed \$1,561,436 to account for 2020 and 2021 plant-in-service investments with a known and measurable adjustment for wages, salaries, and benefits. The Step Adjustment would include only allowed non-revenue producing projects closed to plant in 2020 and 2021, and which are placed in service and used and useful, in the amount of \$12,094,580, net of a pending grant and accumulated depreciation, plus 2021 known and measurable wages, salaries, and benefits increases.

Both the Permanent Rate Change and the Step Adjustment are proposed to be effective for service rendered on and after the dates the Commission issues orders respectively approving the proposed revenue requirements for each.

A. Overview of Terms and Proposed Timelines

Pursuant to the terms of the Settlement Agreement, the proposed Permanent Rate Change would result in a decrease in current customer rates, while the proposed Step Adjustment would result in a subsequent increase in rates. The Settling Parties proposed that the anticipated rate changes be reconciled back to February 1, 2021, the effective date of temporary rates, as approved in Order No. 26,488 issued on June 21, 2021. The Settling Parties further proposed that the effective date of the Permanent Rate Change and the Step Adjustment occur contemporaneously. Thus, customer charges would be adjusted only one time, based on the net impact of the two adjustments, upon the Commission's approval of the future Step Adjustment filing. This would prevent a rate decrease followed quickly by a rate increase—in effect, leveling out the impact of the proposed rate changes.

On June 20, 2022, Aquarion submitted a petition to the Commission for the proposed Step Adjustment pursuant to the Settlement Agreement, subsequently docketed in DW 22-037. The Settling Parties requested that the Commission approve the Settlement Agreement for effect on or before July 29, 2022.¹

B. Revenue Requirement

The Settlement Agreement proposes approval of a total revenue decrease of \$305,227, reflecting expenses and plant investments through 2019. The revenue decrease is proposed for effect upon service rendered on and after the dates of

¹ Aquarion filed its Step Adjustment petition on June 20, 2022. That petition was docketed in Docket No. DW 22-037 at the time of filing. However, because the Settlement Agreement requested the Step Adjustment be adjudicated within the current proceeding, the Commission will consolidate the Step Adjustment petition and subsequent filings into Docket No. DW 20-184 effective on the date of this order. Docket No. DW 22-037 will then be closed.

Commission order issuance approving the proposed permanent rates and the proposed Step Adjustment revenue requirements. The revenue decrease and corresponding change in permanent rates are proposed to be reconciled back to February 1, 2021, the effective date of temporary rates, consistent with Order No. 26,488, issued on June 21, 2021. The Step Adjustment would be subject to DOE audit and reconciliation. Aquarion reserved the right to request a decision on its Step Adjustment petition on or before July 1, 2022, or as soon as possible, provided that the DOE Audit Division and the DOE Regulatory Division have completed their audit and review of the filing. The Settlement Agreement includes specific documentation and process steps required for the Step Adjustment filing.

C. Cost of Capital

The Settling Parties recommend approval of a pre-tax, weighted average cost of capital (WACC) of 7.54 percent, calculated as follows:

	Percentage	Cost	Weighted Cost
Long-Term Debt	45.57%	5.68%	2.59%
Preferred Equity	0.01%	6.00%	0.00%
Common Equity	54.42%	9.10%	4.95%
WACC			7.54%

The Settling Parties further agree to cap the cost of long-term debt at 5.68 percent until the next rate case, notwithstanding the results of the planned long-term debt issuance by the Company. Compared to the Company's original Petition, the Settlement Agreement eliminates short-term debt from the Company's capital structure and decreases the cost of long-term debt from 6.14% to 5.68% and common equity from 10.25% to 9.10%.

D. Step Adjustment

The Settling Parties propose that the Step Adjustment be based on the following elements:

- (1) Non-revenue producing projects closed to plant in 2020 and 2021, that are placed in service, and used and useful, in the amount of \$12,094,580, net of a pending grant and accumulated depreciation, plus the 2021 known and measurable wages, salaries, and benefits increase shown in Appendix 5 will be included in the Step Adjustment.
- (2) The Step Adjustment will result in an additional revenue increase not-to-exceed \$1,561,436.
- (3) Local property taxes will not be included in the calculation and will be recovered through the Property Tax Adjustment Mechanism (PTAM) addressed in Section 6 of the Settlement Agreement.
- (4) State utility property taxes for all projects listed in Appendix 4 of the Settlement Agreement will be calculated using the statutory tax rate in RSA 83-F:2; and
- (5) Depreciation expense will be calculated using a whole-life methodology.

For implementation of the Step Adjustment, Aquarion agrees to submit its filing to commence review of the Step Adjustment, including project documentation, within 14 days of execution of the Settlement Agreement. The Settlement Agreement further provides that the Settling Parties may request additional information from Aquarion regarding the Step Adjustment, and that the Step Adjustment proposal will be subject to DOE audit and reconciliation and final approval by the Commission.

E. Water Infrastructure and Conservation Adjustment (WICA)

The Settling Parties reached agreement that Aquarion's existing WICA program² should continue on a "permanent" basis, with the same terms of operation as currently authorized, subject to the following modifications pursuant to the Settlement Agreement:

² In order to clarify the Commission's interpretation of the Settlement Agreement language, the WICA is herein approved for continuation at this time but remains subject to continued review and subsequent approval by the Commission in the Company's next base rate case.

- (1) The time period for WICA additions will match a calendar year (January 1 through December 31), rather than the current schedule (October 1 through September 30);
- (2) There shall be an increase in the costs related to the emergency reactive replacement of services, valves, and hydrants from \$50,000 to \$75,000;
- (3) Property tax in the WICA shall include only state taxes on new plant additions; local property taxes shall not be included through WICA adjustments but through the property tax adjustment mechanism, discussed below;
- (4) With each WICA filing, Aquarion shall include an ROE analysis as a basis for its decision to file the WICA petition, which will compare the Company's actual rate of return to its authorized WACC. If the Company exceeds the authorized WACC, a proposed 7.54 percent in this Settlement Agreement, by more than fifty basis points for any calendar year calculated under the cost of capital method using end of period balances, the Company shall not pursue a WICA adjustment for that year. The previously approved WICA surcharge, if applicable, will remain in effect until either the filing of its next WICA adjustment the following calendar year or the next base rate proceeding. If the Company has exceeded the fifty-basis point threshold in a given year, it may include its WICA eligible plant investments for recovery in a future WICA filing when it is next eligible to submit a WICA filing.
- (5) The Company will provide an interim budget filing for WICA-eligible plant additions through December 31, 2022, for Commission approval. The interim filing will also include a proposed budget of 2023 WICA eligible plant additions for preliminary approval by the Commission; and
- (6) The next WICA surcharge filing shall be submitted to the Commission on or about February 2023 requesting approval of WICA plant additions placed in service during 2022, approval of its 2023 budget for WICA eligible projects, preliminary approval of its 2024 budget for WICA eligible projects, and submission of its 2025 budget for informational purposes only.

F. Property Tax Adjustment Mechanism (PTAM)

The Settling Parties propose that Aquarion be authorized to implement a fully reconciling PTAM for the recovery or refund of local property tax expenses, as compared to the amount of those taxes included in base rates. The PTAM is proposed to address local property taxes paid in relation to 2020 and 2021 property tax years and to continue annually thereafter, with over- or under-recoveries of local property

tax-adjusted annually. The amount to be included in base rates for local property tax expenses is proposed to be \$494,861. Aquarion agreed to submit its initial PTAM reconciliation filing within 30 days of a Commission order approving the Step Adjustment.

G. Well Monitoring Obligations

The Settlement Agreement seeks authorization for Aquarion to modify the Eligible Well Monitoring Program testing requirements established in Docket DE 97-226³ from monthly to quarterly testing.

H. Rates and Rate Design

Under the Settlement Agreement, the revenue decrease applying to the Permanent Rate Change and the Step Adjustment are to be allocated in accordance with the Company's revised cost of service study. Under the same provision, OCA reserved its right to urge the Commission in other cases – involving Aquarion or any other utility – to adopt rate designs that include inclining block rates.

I. Rate Case Expenses and Temporary-to-Permanent Rate Recoupment

The Settling Parties agree that Aquarion should be permitted to recover, over a one-year period, \$428,675 in estimated rate case expenses, subject to review and adjustment by the DOE and other Settling Parties. Aquarion agrees to submit its rate case expense calculation and proposed surcharge with supporting documentation within 30 days of a Commission order approving the Settlement Agreement.

³ See, e.g., DE 97-226 *Hampton Water Works, Inc.*, Order Approving Settlement Agreement Exempting Hampton Water Works, Inc. from Certain Provisions of the Zoning Ordinances of the Town of North Hampton (Jan. 26, 1999).

J. Effective Date

The Settlement Agreement is subject to and shall become effective upon Commission approval, which the Settling Parties request occur on or before July 29, 2022.

K. General Provisions

The Settling Parties agree and recommend, *inter alia*, that any approval of the Settlement Agreement shall not constitute continuing approval of, or precedent for, any particular principle or issue, but that acceptances will constitute a determination that the Settlement Agreement is lawful, proper, and in the public interest. In addition, pursuant to the Settlement Agreement, the Company agrees to submit its calculation of rate case expenses and a proposed corresponding surcharge within 30 days of the Commission's order approving the Settlement Agreement. The Company also agrees to submit its temporary-to-permanent recoupment filing within 30 days of the Commission's order approving the Step Adjustment. The Settling Parties further agree that the resulting customer credits will be issued over a 12-month period.

The Company also agrees to submit its PTAM filing within 30 days of the Commission's order approving the Step Adjustment. That filing will include a reconciliation of local property taxes paid in the 2020 and 2021 property tax years to the amount of local property taxes reflected in the permanent rate revenue requirement. The Settling Parties agree that the property tax will be recovered through a surcharge, which will become effective no sooner than after the issuance of a Commission order approving the Step Adjustment.

V. COMMISSION ANALYSIS

Pursuant to RSAs 374:2, 378:7, and 378:28, the Commission may approve permanent rates if it finds that the rates are just and reasonable and reflect capital improvements that are found to be prudent, used, and useful. In determining whether

rates are just and reasonable, the Commission acts as the arbiter between the interests of customers and the regulated utility. RSA 363:17-a. The utility bears the burden of proving the necessity of increased rates. RSA 378:8.

Unless precluded by law, informal disposition by stipulation may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation “if it determines that the result is just and reasonable and serves the public interest.” The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Pennichuck Water Works*, Order No. 26,070 at 14-15 (Nov. 7, 2017). Nonetheless, the Commission cannot approve a settlement agreement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.* At 14.

Each of the Settling Parties testified at the hearing held on June 22, 2022, in support of the Settlement Agreement provisions as just and reasonable, as set forth above.

We have reviewed the evidence regarding the permanent rates proposed by Aquarion in its Petition and the terms of the Settlement Agreement as presented in written testimony filed by parties and in oral testimony at the hearing held on June 22, 2022. Based on Aquarion’s projected sales and demand, and the analysis provided by the Company’s Cost of Service Study, as presented and supported through witness testimony, we find that the proposed permanent rates, as described in the Settlement Agreement, will produce revenues necessary to maintain safe and adequate service.

Consistent with the intent of the Settlement Agreement to provide the Company an adjustment to reflect capital additions subsequent to the test year, we approve the

Step Adjustment limit of \$1,561,436. However, consideration of the final amount of the adjustment is subject to a thorough review of the calculations and components in Docket DW 22-037.⁴ Furthermore, the scope of “2021 known and measurable wages, salaries, and benefits” to be included in the Step Adjustment shall only relate to capital costs arising from the specific non-revenue producing projects to be recovered within the Step Adjustment. Wages, salaries, and benefits arising from operations outside of the non-revenue producing capital projects included within the Step Adjustment shall not be allowed for recovery within the Step Adjustment. We believe this was the intent of the Settling Parties and thus provide such clarity here.

Furthermore, the Commission is not, at this time, approving the methodology for calculating the Step Adjustment, as presented in the Settlement Agreement. The Commission has concerns regarding the discontinuity of methodologies related to the calculation and rationales for application of step adjustments across the various regulated utilities. At this time, the Commission intends to launch an investigative docket to further probe the matter, with the ultimate goal of establishing consistent standards for the composition of step adjustments and when, why, and how the Commission considers step adjustments proposed by regulated utilities.

We further note concern regarding the limited information provided regarding the rationale for how the Settling Parties calculated the components of the proposed WACC. Although we approve the WACC proposed here, the Commission also intends to launch an investigative docket to establish standards to evaluate proposed changes in the capital structures of the utilities it regulates.

Our concerns regarding step adjustments and changes in capital structures are not unique to this matter and apply across New Hampshire’s regulated utilities.

⁴ As discussed above in footnote 1, Docket No. DW 22-037 will be consolidated into this docket (DW-184) for review.

That said, we find the Settlement Agreement to be just and reasonable and approve it based on our interpretation of the Settlement Agreement language. Accordingly, we approve the requested permanent rates pursuant to RSA 378:28 and Puc 203.20(b), as discussed above.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement regarding permanent rates as submitted by Aquarion and supported by the Settling Parties in this docket is **APPROVED**; and it is

FURTHER ORDERED, that Aquarion's petition for the proposed Step Adjustment currently docketed in DW 22-037 shall be consolidated into the current docket, DW 20-184, reviewed in this proceeding, and subject to the NH Department of Energy's audit and reconciliation; and it is

FURTHER ORDERED, that by August 12, 2022, the parties shall provide a procedural schedule for the Step Adjustment, including a proposed Commission hearing date after the NH Department of Energy's audit and reconciliation is concluded; and it is

FURTHER ORDERED, that all other provisions of the Settlement Agreement are **APPROVED** and shall remain in effect unless and until the Commission rules otherwise; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 1603, Aquarion shall submit properly annotated revised tariff pages within 15 days of the date of a Commission order on the proposed Step Adjustment; and it is


FURTHER ORDERED, that NH Department of Energy is requested to review the annotated revised tariff pages and submit its assessment of the annotated changes within ten days of the Company's submission of the revised tariff pages; and it is


FURTHER ORDERED, that Aquarion shall file, within 30 days of the date of this order, documentation of the difference between temporary rates pursuant to Order No. 26,488 and the permanent rates approved herein, and a proposed surcharge for recovering the difference from customers, for review by the NH Department of Energy, who shall in turn file a recommendation with the Commission; and it is

FURTHER ORDERED, that Aquarion shall file a request for recovery of rate case expenses with the Commission when such applicable rate case expenses are finalized; and it is

FURTHER ORDERED, that Aquarion shall file all necessary documentation and reports in support of the regulatory costs noted above, as required by the Settlement Agreement, including a copy of the recommendation provided by the NH Department of Energy and the Settling Parties pursuant to the Settlement Agreement with regard to the recovery of those costs.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 2022.


Daniel C. Goldner
Chairman


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 20-184

Printed: 7/29/2022

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