

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Aquarion Water Company of New Hampshire

Petition to Charge Seasonal Rates for Emergency Interconnection

Docket No. DW 17 – 062

REQUEST FOR HEARING ON CHANGE IN RATES

NOW COMES the Town of North Hampton (“North Hampton”), by and through NH Water Law, and requests that the Commission: (a) schedule a hearing in this proceeding to consider whether the proposed change from seasonal rates to regular rates is “just and reasonable” as required by RSA 378:7; (b) order the submission of a rate schedules and related information required by the Commission’s Puc1600 Rules; and (c) stay this proceeding pending the submission of the foregoing and issuance of an order of notice as required by RSA 378:3. In support of this request, North Hampton states as follows:

1. On August 9, 2016 in Docket No. 16 – 804, Aquarion Water Company of New Hampshire (“Aquarion”) filed a petition for an emergency interconnection to serve the Wiggins Way system in Stratham, New Hampshire, and to charge its seasonal rates pursuant to a special rate agreement per RSA 378:18.

2. On August 22, 2016, the Commission issued Order No. 25,938 and approved Aquarion’s request. The Commission’s Order specifically authorized the charging of Aquarion’s seasonal rate on file with the Commission, stating that:

“Based upon the foregoing, it is hereby ORDERED, that Aquarion is authorized pursuant to RSA 378:18 to provide temporary emergency water service to the Wiggins Farm Homeowners Association in Stratham, New Hampshire, by means of a temporary connection;

and it is FURTHER ORDERED, that Aquarion may charge Wiggins Farm Homeowners Association at rates that are no higher than its seasonal tariffed rate on file with the Commission as of the date of the connection with Wiggins Farm Homeowners Association”.

3. On April 14, 2017, Aquarion Water Company of New Hampshire, commenced this proceeding by filing its *Petition to Charge Seasonal Rates for Emergency Interconnection*. The petition sought “authority to charge seasonal rates for a temporary, emergency interconnection” to “43 residences on Balsam Way, Christie Lane, Wiggin Way, and Winterberry Lane.” Page 1. The Petition further stated that: “[t]he proposed interconnection will be within Aquarion’s existing franchise territory” (Page 2, Para 7) and that it would change its existing rate for “water service to customers who take water service for a period of less than four consecutive quarters” (Page 2, Para 8) because “the proposed service is for less than four quarters” and “the exact nature of a permanent solution to Wiggin Way’s water supply needs has not yet been determined.” (Page 3, Para 8). As a result, this proceeding was not noticed for consideration as a permanent franchise expansion. No notice or consideration was given as to the appropriate rates. The connection proposed was to be for less than 4 months.

4. On May 10, 2017, the Commission issued Order No. 26,016 Deferring Decision on Intervention Requests and Approving Seasonal Rates, which approved Aquarion’s petition to charge seasonal rates on a temporary basis, stating in relevant part:

“Based upon the foregoing, it is hereby ORDERED, that the petitions of Hampton and North Hampton to intervene are hereby deferred pending the receipt of a petition to expand Aquarion’s franchise; and it is

FURTHER ORDERED, that Aquarion may charge Wiggin Way rates that are no higher than its seasonal rate on file with the Commission plus other miscellaneous charges as of the date of connection with Wiggin Way through October 31, 2017.”

5. On November 20, 2020, over three years after its initial petition, Aquarion has submitted a request to expand its franchise on a permanent basis and to change the rates applicable the Wiggin Way system. However, in doing so, Aquarion has bypassed notice requirements and submission of the information required by the Commission's Puc 1600 rules for rate proceedings. The Commission has not issued an order of notice. To date, the entire focus of this proceeding has been a temporary connection at seasonal rates. The issue of a change in rates and what rate may be just and reasonable has not been noticed or given consideration.

6. RSA 378:3 requires that changes in rates may be approved only after notice to customers, stating:

378:3 Change. – Unless the commission otherwise orders, no change shall be made in any rate, fare, charge or price, which shall have been filed or published by a public utility in compliance with the requirements hereof, except after 30 days' notice to the commission and such notice to the public as the commission shall direct.

7. In Appeal of Pennichuck Water Works, 120 N.H. 562, 566 (1980), the New Hampshire Supreme Court explained that rates cannot be changed without notice to customers, stating that:

If the PUC were to allow a rate increase to take effect applicable to services rendered at any time prior to the date the petition for the rate increase was filed, it would be retroactively altering the law and the established contractual agreement between the parties. In essence, such action would be creating a new obligation in respect to a past transaction, in violation of part 1, article 23 of our State Constitution and, due to the retroactive application, would also raise serious questions under the Contract Clause of the Federal Constitution, U.S. Const. art. I, § 10, cl. 1.

8. In addition to notice, RSA 378:7 requires that the Commission hold a hearing to consider whether any change in rates is just and reasonable, stating:

378:7 Fixing of Rates by Commission. – Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. [...]

9. A just and reasonable rate under RSA 378:7 cannot result in undue subsidy or adverse impacts on other classes of customers. RSA 378:10 prohibits undue preference or advantage to one class of customer over others, stating:

378:10 Preferences. – No public utility shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of service in any respect whatever or subject any particular person or corporation or locality, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatever.

10. A determination as to whether a change from one rate classification to another is “just and reasonable” under RSA 378:7 or in violation RSA 378:10 requires the submission of evidence as to the cost to serve customers. This determination cannot be made in isolation, without financial information such as required by the Commission’s Puc 1600 rules. For example, in *Lakes Region Water*, DW 19 – 177, Order No. 26,446 (2021), the Commission deferred consideration of rate consolidation, noting that such a “determination should be made in the context of the Company’s current full rate case.” Page 3. The Commission required that consolidation be evaluated based on “two separate permanent rate schedules” which included both stand-alone and consolidated financial schedules. *Id.*

11. In another recent case involving Liberty Utilities, DG 17 – 048 , the Commission explained in Order No. 26,122 (2018) that:

Unreasonable cross-subsidization of expansionary business by an existing utility, or of one class or locality of utility customers by the general customer base of a utility, is to be avoided. *See Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, Order No. 26,109* at 15-22 (March 5, 2018); *In re: Concord Steam Corporation Non-Governmental Customers , Order No. 26,017* at 11-12 (May 11, 2017); *see also C. Julian Tuthill Et Al. v. Plaistow Electric Light & Power Company*, 8 N.H.P.S.C. 509, 510 (1922). This precedent is undergirded by RSA 378:10, "[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of service in any respect whatever or subject any particular person or corporation or locality, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatever." On the other hand, under RSA 378:11, "The provisions of RSA 378:10 shall not require absolute uniformity in the charges made and demanded by public utilities when the circumstances render any lack of uniformity reasonable." The Commission has discretion in balancing the need for fairness in avoiding cross-subsidization with ensuring the overall public interest.

Page 37. In the *Liberty* case, the Commission had the benefit of detailed financial information as to the revenue deficiency in the system to be added and other financial aspects of the liabilities to be assumed by existing customers. The Commission considered this evidence and ultimately concluded that: "consolidation will reduce administrative costs and provide an opportunity for revenue growth in Keene that, if successful, will benefit all Liberty customers. We are persuaded that there will not be an unreasonable cost shifting by consolidating Keene with EnergyNorth's distribution customers." (Page 38).

12. In this case, however, Aquarion has provided no financial information that would allow the Commission to make a determination as to whether the proposed rate is just and reasonable or would result in unreasonable cost shifting. There are serious concerns that the addition of the Wiggin Way system at the proposed rate could result in unreasonable cost shifting and subsidies in violation of RSA 378:7 and RSA 378:10. By way of example only:

The Wiggin Way system has only 43 customers. As a result, it will produce very little revenue to offset operations and maintenance expenses and likely require a subsidy by existing customers. Based on its age and past supply problems, it seems likely that the Wiggin Way system does not meet current NHDES. *See e.g. Env-Dw 404, 405 & 407.* It may require upgrades or improvements. However, any improvements that may be needed would not likely be supported by revenues from its 43 customers.

13. Aquarion's Tariff, DES rules and sound rate making principles contemplate that main extensions be built to existing standards and paid for by developers, not assumed as an liability by the utility or its existing customers without revenues to offset the costs. *See e.g. Tariff, Page 10, Para. 40.* Similar concepts apply when a new system is added. The costs to operate this system need to be evaluated in order to determine whether the proposed rates are just and reasonable.

14. Secondly, the impact of the proposed expansion on North Hampton and other municipal fire protection customers needs to be examined before the rate is approved. According to the schedules submitted by Aquarion in DW 20 – 184, Hampton, North Hampton, Rye Beach and Jenness Beach, pay a total of \$849,320 per year in public fire protection charges to maintain capacity in Aquarion's water system needed for fire protection.¹ Aquarion's schedules in that proceeding show that it plans to increase public fire protection charges by 33.3% to \$1,131,877 per year!² North Hampton's fire protection charges will increase to \$340,706 per year.³

¹ DW 20 – 184, Testimony of John F. Guastella, Schedule 17.

² *Id.*

³ *Id.*

15. North Hampton and other municipal fire protection customers pay significant charges to maintain additional capacity for fire protection. The Wiggin Way system will likely increase peak demands on the system due to lawn watering which will reduce the capacity that has been added to the system and paid for by fire protection customers. However, the Wiggin Way system has no fire hydrants. The proposed expansion would appear to take advantage of the capacity paid for by municipal fire protection customers without paying its share of the increased costs to maintain fire protection flows, contrary to RSA 378:10.

16. These and other issues need to be examined, discovered and resolved before a permanent rate can be set. A hearing based on adequate financial information is required to consider and determine whether the change in rates from the current temporary seasonal rate to the proposed permanent rate for the Wiggin Way system is just and reasonable as required by RSA 378:7, or, an unlawful one that gives undue or unreasonable preference or advantage, contrary to RSA 378:10.

WHEREFORE North Hampton requests that the Commission:

- A. Grant North Hampton's Petition to Intervene, previously filed;
- B. Order that Aquarion submit the information required by the Commission's Puc 1600 rules in support of its proposed change in rates, including a cost of service study, in order to determine whether the proposed rates are just and reasonable pursuant to RSA 378:3 & 7;
- C. Stay this proceeding pending the submission of the foregoing and issuance of an order of notice as required by RSA 378:3 & 7;
- D. Schedule a hearing and investigation based on the information submitted; and
- E. Grant such other relief as justice may require.

Respectfully submitted,

TOWN OF NORTH HAMPTON

By its Counsel,

NH WATER LAW



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Dated: March 1, 2021

CERTIFICATE OF SERVICE

I certify that a complete copy of the foregoing is being sent this day to all persons on the Commission's official service list for this proceeding.



Justin C. Richardson, Esq.