

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

PENNICHUCK WATER WORKS, INC., PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY, INC.

Petition for Approval of Miscellaneous Utility Service Fees

Docket No. DW 22-002

Department of Energy Reply to the Companies' Objection to Department
Motion to Suspend

NOW COMES the Department of Energy (Department), a party to this docket under RSA 12-P:9, and respectfully reiterates its request for the New Hampshire Public Utilities Commission (Commission) to suspend the schedules submitted by Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc.'s (the Companies) filed on January 18, 2022. In support of this request, the Department states as follows:

1. On February 14, 2022, the Department filed a letter requesting that the Commission suspend the effectiveness of revised tariffs submitted with the Companies' request to increase certain fees in each Companies' Miscellaneous Utility Service Fees schedules by February 18, 2022. The Department made that filing in response to the Companies' initial request, submitted on January 18, 2022, which set forth its proposed tariff changes in revised tariffs with an effective date of February 18, 2022.

2. The Department notes that its request for suspension was made, as indicated in its filing, to provide additional time for investigation into those proposed rate changes, pursuant to RSA 378:6. The Department further states that without a suspension order from the Commission, those rates may be deemed effective by operation of law on February 18, 2022, allowing the Companies to charge those rates without prior investigation or Commission approval thereafter.

See Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, Order No. 25,981 at 2 (January 26, 2017) (“[i]n the absence of [a tariff suspension], the tariff amendment might be deemed to become effective 30 days after filing under RSA 378:3”).

3. On February 16, 2022, the Companies submitted their Objection to Department Motion to Suspend (Objection) based on various arguments that the Department’s request to suspend should be denied, or in the alternative, be imposed with conditions. Both the Companies’ arguments and request for conditions fail and must not be the basis for Commission failure to suspend.

4. The Companies argue that the Department’s motion fails as it “invokes up to 12 months of investigative time for non-general rate increases,” and that it should be denied for “lack of specificity.” Objection at 2, 3. The Companies further contend that the Commission cannot suspend these schedules. Objection at 2 (“[s]etting aside the issue of whether the Commission can suspend the instant rate schedules under RSA 378:6”). These arguments lack merit as the Commission certainly does have the authority to suspend the instant schedules and the Department, furthermore, is not required to specify the timeframe for which a suspension is required, as that is a determination solely made by the Commission.

5. In its filing, the Department cited RSA 378:6 generally as Commission authority for the suspension of schedules. RSA 378:6, I(a) permits the Commission to suspend schedules reflecting a “general increase in rates ... not to exceed 12 months.” RSA 378:6, I(b) further states that the Commission may suspend “all other schedules filed ... not to exceed 3 months ... but if the investigation cannot be concluded within a period of 3 months, the [C]ommission within its discretion and with reasonable explanation may extend the time of suspension for 5 additional months.” (emphasis added).

6. The Companies correctly stated that RSA 378:6 authorizes a suspension period of up to 12 months for “instances of ‘general increases in rates,’” which is the specific provision in RSA 378:6, I(a). Objection at 2. The Companies contend, however, that the Miscellaneous Utility Service Fee rate schedules “do not concern a general rate increase to the Companies’ customer classes nor an increase in the Companies’ revenue requirement,” and thus the Commission cannot suspend the schedules on that basis. *Id.*

7. Even if the Commission were to determine that these schedules would not effect a “general increase in rates,” they nevertheless would fall within the category of “all other schedules filed,” under RSA 378:6, I(b). As such, the Commission may suspend the schedules for up to 3 months, with a provision for an additional 5 months if necessary. As the schedules contain a change in rates, the Commission clearly has the authority to suspend their taking effect, and the only relevant question is the period of suspension based on the determination whether the schedules would result in a “general rate increase” or instead fall within the category of “all other schedules filed,” under RSA 378:6.

8. The Companies’ argument that the Department’s request to suspend should be denied because it lacked specificity also fails. While it is accurate that the Department did not cite the specific subsection of RSA 378:6 in the request for suspension, the Department did so in recognition that the Commission is the ultimate determiner of both the type of schedule presented and thus the appropriate period of suspension. The Department simply highlighted the need for investigation and the general statutory basis for the Commission to exercise its power of suspension. The fact that the Department did not make a determination of what type of schedules are presented does not alleviate the need for an adequate investigation into a matter coming squarely within the Commission’s rate-setting jurisdiction.

9. The Companies also incorrectly argue that the requirements of RSA 541-A:29 supersede RSA 378:6. The Companies contend that RSA 541-A:29 provides the “time period for conducting an examination in this instance.”¹ RSA 541-A:29, III, however, states that “[i]f the time limits prescribed by this section conflict with specific time limits provided for by other provisions of law, the specific time limits provided for by such other provisions shall control.” As shown above, these tariffs qualify as either “general rate increase schedules” or “all other schedules filed,” the relevant period for suspension and investigation therefore is prescribed by RSA 378:6, as either up to 3 months or up to 12 months initially.

10. Moreover, RSA 363:17-b provides that “[m]atters resolved by final order of the commission shall be exempt from RSA 541-A:29 and RSA 541-A:29-a, but shall be subject to federal and state time limitations applicable to specific matters.” The Department contends that a tariff amendment filing that would result in rate increases will be resolved by a final order of the Commission, and therefore is exempt from the requirements of RSA 541-A:29, counter to the Companies’ argument.

11. The Companies, lastly, argue that if the Commission grants the suspension, two conditions should be imposed derived from RSA 541-A:29: (1) for the Department to timely notify the Commission and Companies of “any apparent errors or omissions” in the filing; and (2) for the Department to advise the Commission of its position on the rate schedules by March

¹ RSA 541-A:29 states that “[i]n processing an application, petition, or request ... the agency shall:

I. Within 30 days of receipt, examine the application, petition, or request, notify the applicant of any apparent errors or omissions, request any additional information that the agency is permitted by law to require, and notify the applicant of the name, official title, address, and telephone number of an agency official or employee who may be contacted regarding the application.

II. Within a reasonable time, not to exceed 60 days, after receipt of the application, petition or request, or of the response to a timely request made by the agency pursuant to paragraph I, the agency shall:

(a) Approve or deny the application, in whole or in part, on the basis of nonadjudicative processes, if disposition of the application by the use of these processes is not precluded by any provision of law; or
(b) Commence an adjudicative proceeding in accordance with this chapter

19, 2022, prior to the 60-day review period specified in RSA 541-A:29, II, so that the Commission can either approve or deny the schedules or commence an adjudicative hearing.

12. The Department argues that the first proposed condition is improperly assigning the power to determine an error or omission to the Department. While the Department is certainly allowed to file in Commission matters its position on certain filings, the Companies are requesting a determination be made by the Department to the Commission. As this is a Commission filing, the Department contends that the Commission, as the final arbiter in Commission matters, holds the power to determine if an error or omission is contained within the filing. *See* RSA 363-17-a. As such, the proposed conditions are not appropriate and should not be imposed.

13. The Department contends that the second proposed time condition is inconsistent with the governing statute of RSA 378:6. First, the condition proposed would impose a 29-day deadline (March 19, 2022) from the date of a possible Commission suspension order. The Companies calculated that deadline based on the date of the Companies' filing. That is in stark contrast to the suspension periods of up to 3 or 12 months, provided by RSA 378:6, which begin upon the issuance of a Commission order, not the time of the Companies' filing. As the time periods conflict, the provisions of RSA 378:6 govern. *See* RSA 541-A:29, III.

14. The Department notes finally that the statutory authority for the Commission to suspend the schedules under RSA 378:6 does not expressly authorize the Commission to impose any conditions upon the suspension period. Rather, those subsections merely provide for Commission discretion to determine what types of schedules are filed and the period of suspension for further investigation. As such, the proposed conditions are not appropriate and should not be imposed.

WHEREFORE, the Department respectfully requests that this honorable Commission:

- A. Grant the relief requested in the Department of Energy's initial filing on February 14, 2022, notwithstanding the Companies' Objection;
- B. Deny the Companies' motion for conditional approval request to grant the motion per RSA 378:7 (statutory to fix rates) and impose conditions as stated above, pursuant to RSA 541-A:29; and
- C. Grant such other and further relief as may be appropriate under the circumstances.

February 17, 2022

N.H. DEPARTMENT OF ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.

/s/ Christopher R. Tuomala

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