

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

Lakes Region Water Company, Inc.

Petition for Step Adjustment

Docket No. DW 22-068

NEW HAMPSHIRE DEPARTMENT OF ENERGY’S INITIAL BRIEF
IN SUPPORT OF UTILITY RECOVERY OF REASONABLE STEP EXPENSES

The Public Utilities Commission (“Commission”) required the New Hampshire Department of Energy (“DOE” or “the Department”) and other settling parties to “file written legal briefs concerning the legal basis and any precedent for requesting recovery of expenses relating to the step adjustment[,]” in Docket No. 22-068. This brief, in support of Lakes Region Water Company, Inc.’s (LRWC) recovering appropriate step-related expenses through a surcharge to customers, meets the Commission’s requirement.

I. SUMMARY

DOE supports LRWC’s recovery of appropriate step-related expenses. As explained below in further detail, step adjustments serve the important functions of addressing regulatory lag for small utilities and of supporting gradual rate increases over longer time periods (“gradualism”) for utilities with a relatively small number of customers. Step increases also extend the time between rate-cases, thus conserving administrative time and expenses for the Commission and all parties. DOE also sometimes uses consultants itself when adjudicating permanent rates and step increases. DOE is able to bill utilities for those consultant expenses, however utilities reasonably expect to recover those expenses from ratepayers. *See Attachment*

A, Technical Statement of Jayson P. Laflamme, Director, Water Group, Division of Regulatory Support, DOE (hereinafter “DOE Laflamme Tech Statement”) at 3.

In the opinion of the DOE, NH Administrative Rules Chapter 1900 do not address the recovery of expenses related to step increases. Nonetheless, in DOE’s opinion, appropriate expenses related to step increases are recoverable by small utilities in advance of a future rate case because step increases serve important policy goals. The recovery of a small utilities’ step increase expenses is also consistent with past precedent and past practice.

II. INTRODUCTION / PROCEDURAL HISTORY

On April 28, 2022, in Docket No. DW 20–187, LRWC and the DOE entered into a permanent rates settlement agreement (Permanent Rates Settlement). On May 27, 2022, the Commission approved the Permanent Rate Settlement in Docket No. DW 20-187. *See* Order No 26,633 (Revised on July 12, 2022). The Permanent Rate Settlement contemplated various aspects of the proceeding, including the establishment of permanent rates; the filing of a Step I rate adjustment; and the recovery of rate case expenses relating to the establishment of both permanent rates and the step adjustment. *See e.g.*, Permanent Rates Settlement at 5. On October 19, 2022, LRWC filed a *Petition for Step Adjustment* in Docket No. DW 20-187. After receipt of that petition, the Commission subsequently opened Docket No. DW 22-068 to adjudicate the *Petition for Step Adjustment*.¹ On March 9, 2023, in Docket No. DW 22-068, LRWC submitted a *Stipulation and Recommendation of Parties to Approve Step I Adjustment by Order Nisi* (Step Adjustment Settlement), in which the Settling Parties agreed and recommended the Commission approve LRWC’s recovery of its reasonable rate case expenses for this proceeding (i.e. the Step

¹ While the *Petition for Step Adjustment* was docketed in DW 22-068 on October 19, 2023, the Order of Notice and Commencement of Adjudicative Proceeding for that docket was issued by the Commission on December 13, 2022.

Adjustment proceeding) through a surcharge to customers. *See Stipulation and Recommendation of Parties to Approve Step 1 Adjustment by Order Nisi* at 11, DW 22-068 (March 9, 2023). On March 27, 2023, the Commission issued an Order *Nisi* approving the Step Adjustment Settlement. *See Order No. 26,790*. On July 28, 2023, LRWC, in dockets DW 20-187 and DW 22-068, LRWC filed a request for approval of rate case expenses and a calculation of reconciliation of temporary rates to permanent rates. On October 26, 2023, LRWC filed a settlement agreement, in both dockets, for recovery of its rate case expenses and temporary-to-permanent rate reconciliation relative to the permanent rate proceeding in DW 20-187 and its expenses incurred relative to the approval of its step adjustment in DW 22-068. On November 30, 2023, in Docket No. DW 22-068, the Commission issued *Procedural Order Re: Approval of Settlement on the Issue of Rate Case Expenses* which required that within thirty days of issuance of this order the settling parties file written legal briefs concerning the legal basis and any precedent for requesting recovery of expenses relating to the step adjustment proceeding.

III. DOE'S ANALYSIS

A. Expenses related to step increases do not fall within the ambit of NH Code Admin Rules Chapter 1900

New Hampshire Code of Administrative Rules Chapter 1900, *Rate Case Expenses*, is uniquely focused on expenses directly related to what are commonly described as “permanent rates” in contrast to “temporary rates.” *Compare* RSA 378:27 “Temporary Rates” *with* RSA 378:28 “Permanent Rates” (“permanent rates” is a term of art within utility practice); *see In Re Guardianship of C.R.* 174 N.H. 804,807 (January 2022) (summarizing standard rules of statutory construction). The same rules of statutory construction that apply to statutes are applicable to the interpretation of administrative rules. Although statutory construction requires that language be

construed “consistent with its plain and ordinary meaning,” *see id.*, where, as here, the field of utility regulation includes as terms of art “temporary rates” and “permanent rates” the more specific meaning appropriate to the context and specialized field is the appropriate meaning to apply. *See id.* (all parts of a statute are construed together to effectuate the overall purpose and avoid an absurd or unjust result; statutes are not construed in isolation; they are construed in harmony with the overall statutory scheme). *See Appeal of Public Service Company of New Hampshire*, 125 N.H. 46, 52 (1984) (In matters of statutory interpretation, the NH Supreme Court will “follow common and approved usage except where it is apparent that a technical term is used in a technical sense”). Thus, Puc Chapter 1900’s reference to “permanent rates” does not mean “any rate that has been approved as other than temporary.” The reference to “permanent rates” means “rates established in the permanent rate case stage of the docket.” Step increases and any related expenses fall wholly outside the ambit of Puc Chapter 1900.

This conclusion is supported by other definitions in Chapter 1900. Chapter 1900 defines “rate case expenses” as “...those non-recurring expenses incurred by a utility in the preparing or presentation of **a full rate case proceeding** before the commission, **necessary** for the conduct of the rate case.” Puc 1903.05 (emphasis added). “Full rate case” is defined as “a proceeding in which a revenue requirement is established for a utility and rates are set to meet that revenue requirement pursuant to Puc 1604.” Chapter 1900 also defines “final order” as “an order of the commission . . . rendering **its final determination on permanent rates.**” (emphasis added). Taken together, Chapter 1900 is intended to address what is, and what is not recoverable for expenses associated with adjudicating permanent (not temporary) rates.

Based upon the above, by definition, a step increase is distinct from the determination of permanent rates; a step increase addresses recovery of capital costs incurred after the utility’s test

year. *See* DOE Laflamme Tech Statement at 3. Accordingly, as stated above, expenses associated with step increases do not fall within the ambit of Puc Chapter 1900.

- B. Nonetheless, because of the important objectives step increases achieve, appropriate expenses related to small utilities step increases may be recovered if deemed just and reasonable.

In the opinion of DOE, notwithstanding that step expenses are not addressed by Puc Chapter 1900, step adjustments are valuable tools for regulating small water utilities and therefore appropriate step-related expenses are (and have already been) reasonable for recovery. *See* DOE Laflamme Tech Statement at 3-4. The recovery of step-related expenses is fully consistent with RSA 378:28 “Permanent Rates” which states in relevant part:

Nothing contained in this section shall preclude the commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon.

Permanent rate case proceedings are not intended to preclude the adjustment or rate base requirements through step adjustments and/or the recovery of reasonable step-expenses.

Step adjustments are valuable tools for managing small water utilities. Step adjustments mitigate regulatory lag for small water utilities such as LRWC for plant investments that occur within 12-24 months after the approved test year. *See* DOE Laflamme Tech Statement at 2-3. Step increases also support rate gradualism for utility customers by avoiding a steep accumulation of capital investments to be added to rate base all-at-once in sequential permanent rate proceedings over what is—by definition—a small number of customers. *See Id. at 2-4.*

The step adjustments (and expenses) may, themselves, also organically extend the timeframe between general rate proceedings because capital improvements in the period immediately following the rate case have been included in rates.

C. Further, in the instant case, recovery of step adjustment expenses was contemplated by the Settling Parties in the original Permanent Rate Settlement and throughout subsequent filings in Dockets DW 20-187 and DW 22-068

As noted in the section titled “Introduction/Procedural History” above, LRWC and the Department contemplated recovery of step adjustment related expenses in the various settlement agreements filed in both DW 20-187 and DW 22-068. The applicable standard of review for a settlement agreement, pursuant to N.H. Admin. R., Puc 203.20(b), is whether the settlement results are just and reasonable and serve the public interest. Even when all parties join a settlement agreement, the Commission cannot approve it without independently determining that the results comport with the applicable underlying standards. *EnergyNorth Natural Gas Inc. d/b/a National Grid NH*, Order No. 25, 202 at 18 (March 10, 2011). When the Commission rejects a settlement agreement, it may order the settling parties to renegotiate those provisions that fail to meet the standard, or it may reach its own conclusion as to those matters and issue a final order pursuant to RSA 363:17-b. *See Triennial Energy Efficiency Plan, Order on 2021-2023 Triennial Energy Efficiency Plan and Implementation of Energy Efficiency Program*, Order No, 26,553. Here, the Commission approved the various settlement agreements without ordering the settling parties to renegotiate those provisions and without reaching any conclusion regarding recovery of the step adjustment related expenses. Therefore, as discussed below, at this late stage a disallowance of rate case expenses for a small water company such as LRWC could have a significant impact.

D. The recovery of step-expenses in Step Adjustment proceedings is especially important for small water utilities.

Small water utilities have several unique characteristics as compared to large utilities that make the recovery of step-related expenses especially important regarding utility regulation.

First, small water utilities are less likely to have full time professionals, including engineers, attorneys, and accountants on staff. Accordingly, small utilities are significantly more likely to hire consultants specifically to work on step adjustments and are unlikely to have been able to include those consultant costs in standard staff time included in the revenue requirement. This is the case for LRWC, where, for example, LRWC’s legal requirements for both the permanent rate case and the step adjustment were provided by contract attorneys. *See* DOE Laflamme Tech Statement at 2-4. Thus, proportionately, small water utilities are likely to have large expenses solely related to rate case and step adjustment proceedings.

Second, smaller utilities are likely to find it challenging to carry any appropriate step-expenses on their books until the next rate case. The complexity of the issues a small utility may need to resolve in a step adjustment is not wholly within its control. In addition, the DOE itself may need to hire consultants to address step-related topics. DOE would bill the utility for those costs, and the small utility would anticipate fairly prompt recovery, consistent with past practice (see below). *See* Laflamme Tech Statement at 3; RSA 365:37-38. A prohibition on the prompt recovery of step-expenses for small utilities could have a chilling impact on the role of skilled consultants working with small utilities and potentially on capital investments that support safe and reliable service.

E. Past practice supports review and recovery of expenses related to step increases.

The Commission has a past practice of approving step-related expenses for small water utilities. For example, the Commission has done so in the following small water dockets:

Docket No. DW 08-065, Hampstead Area Water Company, Inc., Commission Order No. 25,077 (February 25, 2010) at 5 (also approving step adjustments to rates describing “step adjustment expenses” generically as “rate case expenses”).

Docket No. DW 08-070, Lakes Region Water Company, Inc., Commission Order No. 24,925 (December 30, 2008) at 9 and 15 (also approving step adjustment and describing “step adjustment expenses” generically as “rate case expenses”) and Order No. 24,954 (March 27, 2009) at 4 (also approving step adjustment and describing “step adjustment expenses” generically as “rate case expenses”).

Docket No. DW 08-070, Lakes Region Water Company, Inc., Commission Order No. 25,197 (February 18, 2011) at 4 (approving step increase) and Order No. 25,226 (May 27, 2011) at 3 (approving recovery of expenses related to the February 18, 2011 step increase and referring to “step adjustment related expenses” generically as “rate case expenses”).

Docket No. 13-213, West Swanzey Water Company, Commission Order No. 25,606 (December 19, 2013) at 5 (also approving step adjustment and describing associated step adjustment expenses generically as “rate case expenses”).

Docket No. DW 17-118, Hampstead Area Water Company, Inc., Commission Order No. 26,248 (May 6, 2019) at 3 (describing step adjustment-expenses generically as “rate case expenses”).

Further, in Docket No. DW 23-020, the Commission held small water utilities have historically relied on incremental steps in ratemaking dockets as a tool to limit rate shock and provide time between rate cases. *See Step Adjustment Rate Expenses and Denying Motion to Clarify*, at 1-2, DW 23-030 (December 20, 2023). The Commission also acknowledged that it has approved expenses attributed to step proceedings for similarly situated small water utilities. *Id.*

The DOE generally does support excluding step-related expenses from recovery for larger utilities for a number of policy reasons not relevant here. *See, e.g.*, Docket DG 20-105 Liberty Utilities (EnergyNorth Natural Gas Corp. d/b/a Liberty; DOE Letter (January 13, 2022) (DOE does not support recovery for depreciation study incurred outside the test year). However, as discussed herein, DOE supports LRWC’s recovery of appropriate step-related expenses.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the Department of Energy respectfully recommends that the Public Utilities Commission:

- A. FIND that LRWC's step-related expenses do not fall within the ambit of NH Code Admin Rules Chapter 1900;
- B. FIND that the step increase at issue here, can: (i) mitigate regulatory lag, (ii) support rate gradualism; (iii) extend the time between rate cases, thus conserving administrative time and expense;
- C. FIND that, consistent with past practice, and because of the important policy objectives step increases may achieve, expenses due to LRWC's Step Adjustment are appropriate for recovery;
- D. GRANT such other and further relief as is reasonable and just.

Respectfully Submitted,

New Hampshire Department of Energy
By its Attorney,



Matthew C. Young
21 South Fruit Street, Suite 10
Concord, NH 03301
(603) 271-3670
Matthew.C.Young@energy.nh.gov

December 21, 2023

CERTIFICATE OF SERVICE

I hereby provide that a copy of this pleading was provided by electronic mail to the individuals included in the Commission's service list in this docket on this date, December 21, 2023.

A handwritten signature in black ink that reads "Matthew C. Young". The signature is written in a cursive style with a large, stylized initial 'M'.

Matthew C. Young