

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Docket No. DW 23-020

THE HAMPSTEAD AREA WATER COMPANY, INC.

**LEGAL BRIEF IN SUPPORT OF STEP RATE CASE EXPENSE RECOVERY**

NOW COMES, The Hampstead Area Water Company, Inc. (HAWC or The Company), pursuant to Puc 203.04, 203.07, and 202.03, and respectfully submits the following legal brief in support of Company's recovery of its Step I and Step II Rate Case Expenses incurred during Docket No. DW 20-117 and DW 23-020 as requested by the Public Utilities Commission (PUC or Commission) in Order No. 26,902.<sup>1</sup>

HAWC is entitled to recover its prudently incurred, just and reasonable rate case expenses in the prosecution of its two approved steps because both are permanent rate changes that occur as part of a rate case. HAWC and the other settling parties to the original settlement agreement in Docket No. 20-117 expressly included two step adjustments to its permanent rates. The two step adjustments were negotiated components of permanent rates. Thereafter, the same parties—other than the OCA who did not participate—agreed to a settlement of the first step adjustment. The Commission approved both settlement agreements. In its order approving the first step settlement agreement not only were rate case expenses HAWC incurred for each approved step anticipated but expressly ordered such expenses to be consolidated with the second step case expenses HAWC would later file, which it did. This order also noted no parties filed objections to the consolidation of its first and second step rate case expenses.

If the Commission now disallows HAWC from recovering any of its rate case expenses prudently incurred during its two approved steps it would invalidate the previously approved original settlement agreement in Docket No. DW 20-117. It would also separate step rate case expenses as being something other than part of an approved permanent rate adjustment, which is unsupported by any Puc rule or statute.

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<sup>1</sup> "Order No. \_\_\_\_" shall relate to either this Docket or the related Docket No. 20-117.

## I. PROCEDURAL HISTORY

HAWC filed a request for a change in rates on November 24, 2020, and the Commission assigned the matter Docket No. 20-117. *See Virtual File Room, Docket No. 20-117, at Tab 8.* On May 9, 2022, the Company filed a *Settlement Agreement - Permanent Rates*<sup>2</sup> for the Commission's consideration and approval that included certain provisions regarding the recovery of rate case expenses. *See Id., at Tab 113* The permanent rate settlement agreement included revenue requirement provisions obtained through two future step adjustments. The permanent rate settlement agreement was approved by the Commission in Order No. 26,635. *See Id., at Tab 120.* The Commission stated: "To avoid rate shock, the [first] step increase shall not take place before December 16, 2022, and not exceed [a total revenue requirement of] \$2,798,932, with a second step increase which shall not take place before June 16, 2023, and not exceed [a total revenue requirement of] \$3,018,955..." *Order No. 26,635, at p. 1* (brackets supplied). The PUC later stated: "The stepped approach is intended to lessen the overall rate impact on customers when new permanent rates, *inclusive of approved step increases, are approved.*" *Id., at p. 14* (emphasis added).

HAWC filed its Step I adjustment to revenue requirement and rates pursuant to the conditions required by Order No. 26,635, on September 1, 2022. *See Virtual File Room, Docket No. 20-117 at Tab 142.* On October 18, 2022, the PUC approved a procedural schedule for Step I. *See Id., at Tab 147.* On January 25, 2023, the Company filed a settlement agreement for its first step adjustment to permanent rates (Step I). *See Id., at Tab 160.* The Step I settlement agreement<sup>3</sup> included an increase to revenue requirement within the parameters approved in Order No. 26,635. The Step I settlement agreement was approved by the PUC in Order No. 26,809. *See Virtual File Room, Docket No. 20-117, at Tab 178.* This Order included the following provision: "**FURTHER ORDERED**, that HAWC's request for recovery of rate case expenses accrued in the adjudication of its Step I request in this docket shall be combined with its request for recovery of rate case expenses incurred in its Step II adjustment in Docket No. 23-020 when such expenses are

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<sup>2</sup> The Settling Parties for the Permanent Rate settlement agreement were the Company, the New Hampshire Department of Energy, the Office of the Consumer Advocate, intervenor Town of Atkinson, and intervenor Town of Hampstead.

<sup>3</sup> The Step I settling parties included the Company, the New Hampshire Department of Energy, and the Town of Atkinson. The Town of Hampstead later joined the Step I settlement. The Office of the Consumer Advocate did not take a position because it did not participate with the negotiations that led to the settlement.

finalized by HAWC and reviewed and accepted by DOE for the Step II adjustment in Docket No. 23-020;..." *See Id. (bold as contained in the original document).*

HAWC filed its Step II adjustment to revenue requirement and rates pursuant to the conditions required by Order No. 26,635, on March 17, 2023. The Commission assigned this filing a new docket number, DW 23-020. On September 8, 2023, HAWC, the Department of Energy, intervenor town of Atkinson, and intervenor town of Hampstead, (collectively the Settling Parties) filed a settlement agreement for the Company's Step II Adjustment for the Commission's consideration and approval. The OCA filed a letter in support of this settlement. A hearing took place on October 11, 2023, where the Company stated its intent to file for recovery of its Step I and Step II Rate Case Expenses consistent with Order No. 26,809. *See Id.*

On November 8, 2023, the Commission issued Order No. 26,902 allowing the Step II settlement agreement and stated: "the permanent rate settlement and resulting order did not provide for, or anticipate, additional rate case expenses to be submitted and approved for the two step proceeding. Further, it is not customary for the Commission to approve rate case expenses for step proceedings<sup>4</sup>." The Commission then ordered all settling parties to file written legal briefs pertaining to the legal basis and any precedent for requesting recovery of expenses relating to adjustments.

## **ARGUMENT**

### **a. STEP ADJUSTMENTS ARE PART OF A FULL RATE AND EXPENSES INCURRED TO ADJUDICATE STEP ADJUSTMENTS ARE RECOVERABLE**

Just and reasonable rate case expenses prudently incurred for steps that are part of a rate case are recoverable under Puc rules. *See generally, New Eng. Tel. & Tel. Co. v. State* 95 N.H. 353, 367-68 (1949) (Expenses of rate cases are expressly provided for by statute); RSA 365:8 I(j); *N.H Admin. R., Puc 1905-1908*. "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. *See N.H Admin. R., Puc 1903.03*. "Rate Case Expenses" is defined as those non-recurring expenses incurred by a utility in the preparation or

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<sup>4</sup> The Company respectfully disagrees. *See, e.g., infra, Order No. 26,809 at pgs. 5 and 9.*

presentation of a full rate case proceeding before the commission, necessary for the conduct of the rate case. *See Puc 1903.05*. A public utility can recover reasonable rate case expenses for expenses that may include, but are not limited to, consultant expenses, incremental administrative expenses such as copying and delivery charges, and other such rate case related expenditures. *See Puc 1906.01*. Additionally, Puc 1907.01 enumerates expenses that are not recoverable as rate case expenses including provision (g) which states: “such other similar expenses that are not related or material to the preparation or presentation of a full rate case, as determined by the commission after its review.” Rate case expenses incurred during step adjustments to permanent rates are not included in Puc 1907.01 (g) or otherwise expressly disallowed under the Puc rules. The Company asserts its prudent rate case expenses incurred during the adjudication of each of the two permanent rates step adjustments are “Rate Case Expenses” in accord with *Puc 1903.05* that, if deemed just and reasonable and directly related or material to the preparation or presentation of its full-rate case, are recoverable because they are part of the “Full rate case” that began in Docket No. 20-117 and concluded in this docket.

**b. PRIOR PUC PRECEDENT HAS APPROVED RECOVERY OF STEP RATE CASE EXPENSES**

The Commission in previous rate cases has allowed recovery of prudently incurred, and just and reasonable step rate case expenses as a legitimate cost of business recoverable through rates, including for HAWC. *See Hampstead Area Water Company, Inc., DW 08-065, Order No. 25,077, citing Lakes Region Water Company, Inc., Order No. 24,708, 91 N.H. PUC 586, 587 (2006)*. The Commission has also approved step adjustments for limited use as a mechanism between full rate cases to allow a utility to collect additional revenue on investments that are non-revenue producing and are made to improve safe and reliable service. *See Hampstead Area Water Company, Inc., Order No. 26,809; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, Order No. 26,661 (July 29, 2022) at 4, citing Public Service Company of New Hampshire d/b/a Eversource Energy, Order No. 26,504 (July 30, 2021) at 5* (Company allowed to recover prudently incurred costs associated with non-growth investments made during [step period of] 2021). The Company argues that Steps I and II and any prudently incurred, and just and reasonable rate case expenses

during those steps are part of the full rate case. *See Order No. 26,635 at p. 14* (“[t]he stepped approach is intended to lessen the overall rate impact on customers when new permanent rates, inclusive of approved step increases, are approved”). This prior Commission precedent demonstrates steps are part of the permanent rate case and thus, the Company should be entitled to recover its prudently incurred, and just and reasonable rate case expenses, including those incurred to adjudicate Steps I and II to permanent rates, particularly since each step was treated as part of the rate case with its own procedural schedule, data requests, and technical sessions. *See Virtual File Room, Docket No. 20-117, at Tab 147, and Docket No. 23-020, at Tab 22.*

Additionally, the Commission has approved step adjustments for other public utilities recently. *See Northern Utilities Inc., Docket No. DG 22-020, Order No. 26,675* (“filed a settlement agreement in DG 21-104 the Company’s most recent full distribution rate case, which contained a provision for a single step adjustment for capital investments made in calendar year 2021.”). The Company’s present rate case is no different. The Commission treated Northern Utilities, Inc.’s steps as being part of the same full rate case and the Company seeks for the Commission to do the same here, thus allowing the Company to recover its just and reasonable rate case expenses prudently incurred for Steps I and II.

In Order No. 26,902 at page 13 issued on November 8, 2023, the Commission wrote: “...it is not customary for the Commission to approve rate case expenses for step proceedings.” The Company respectfully disagrees with this statement based on prior precedent, and also points to the Commission’s contemplation of recovery of Step rate case expenses in its prior Order in the related Docket No. 20-117. For prior precedent, see *Hampstead Area Water Company, Inc., Order No. 25,077, Docket DW 08-065* (February 25, 2010) where the Commission allowed HAWC to recover step rate case expenses. See also, *Eastman Sewer Company, Inc., DW 08-086, Order No. 25,271 at p. 2*, (allowing recovery of prudently incurred step rate case expenses) citing *Lakes Region Water Company, Inc., Order No. 24,708, 91 N.H. PUC 586, 587 (2006)*. These previous Commission precedents demonstrate the Company is entitled to recover its just and reasonable rate case expenses prudently incurred for Steps I and II.

For the Commission's prior Order, see Order No. 26,809 at pg. 5, entitled "4. RATE CASE EXPENSES INCURRED IN STEPS 1 AND 2" where the Commission stated:

"Accordingly, the Settling Parties [for Step I] agreed that rate case expenses related to Steps I and II, both which stem from the Settlement on Permanent Rates approved earlier in this docket by Order No. 26,635, shall be reviewed and adjudicated together after the final decision on Step II is rendered in Docket No. 23-020. No other party objected to the proposed combined adjudication of rate case expenses for Steps I and II." (All caps as in Order).

Additionally in Order No. 26,809, the Commission ordered the following:

**"FURTHER ORDERED**, that HAWC's request for recovery of rate case expenses accrued in the adjudication of its Step I request in this docket shall be combined with its request for recovery of rate case expenses incurred in its Step II adjustment in Docket No. 23-020 when such expenses are finalized by HAWC and reviewed and accepted by DOE for the Step II adjustment in Docket No. 23-020;" (All caps and bold as in Order).

Both the Step I and Step II proceedings were treated as part of the permanent rate case. Both steps were assigned procedural schedules including discovery and technical sessions, and for both steps a hearing was held in which evidence and testimony in opposition to proposed settlements was presented to the Commission for consideration.

Based upon the foregoing, rate case expenses incurred for Steps I and II are part of the "full rate case" and pursuant to Puc 1904.02, the Company is entitled to recover its just and reasonable rate case expense prudently incurred during both step adjustments to its permanent rates.

### **c. PUBLIC POLICY**

Steps are consistent with the purpose of the test year methodology for setting rates, which is to make the best prediction of future rates. It follows that permanent rates must include step adjustments, otherwise leaving out step adjustments would result in confiscatory rates or attrition. *See Appeal of PSNH*, 130 N.H. 748, 758 (1988) (test year data is modified to conform to actual experience and be more accurate).

If the Commission pivots from its prior precedent and does not allow the Company to seek recovery of its just and reasonable rate case expenses prudently incurred for Steps I and II, it will result in eliminating any compromise to avoid so-called rate shock in the future for customers, and will also essentially eliminate

the Company's ability to agree to stay out provisions for future rate cases which have formed the basis of this settlement and many previous settlements approved by the Commission.

As the Commission noted, the two steps to permanent rates approved by Order No. 26,635 were to lessen the overall impact (rate shock) on customers. If utilities are now prohibited from recovering prudently incurred, and just and reasonable rate case expenses from step proceedings, it will effectively eliminate steps and with it eliminate avoiding future rate shock. Instead, a Company will seek Permanent rate adjustment only, file for rate case expenses within 30 days after the Commission's order, and then pass one large surcharge on to the customer, rather than staggering out the steps and rate case expense surcharges as it intends to.

Additionally, the Commission opened investigative docket IR 22-048 to determine the Step Adjustment Methodology and Process of electric, gas and water utilities. The Company is concerned that a shift in operating procedures regarding recovery of rate case expenses could bear on IR 22-048, thus resulting in the abolition of step increases implemented to protect the consumer. In short, the Company is strongly against eliminating permanent rate steps and would seek to leave steps as an option for utilities in the future.

## **II. CONCLUSION**

For these reasons, the Company is entitled to recover its just and reasonable rate case expense prudently incurred for its Step I and Step II adjustments to its permanent rates, subject to the provisions of Puc 1905 and the Puc 1900 rules generally.

WHEREFORE, HAWC respectfully requests the Commission:

- A. Allow the Company to recover Rate Case Expenses for Steps I and II; and
- B. Grant such further relief as the Commission deems just, reasonable, and equitable.

Respectfully submitted,

THE HAMPSTEAD AREA WATER COMPANY, INC.  
By its Attorney,

*/s/ Anthony S. Augeri*

Date: December 7, 2023

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been emailed this 7<sup>th</sup> day of December 2023 to the Docket Related Service List for this docket.

*/s/ Anthony S. Augeri*

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Anthony S. Augeri