

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-153

PITTSFIELD AQUEDUCT COMPANY, INC.

Request for Change in Rates

Order Authorizing Temporary Rate Recoupment and Recovery of Rate Case Expenses, and Addressing Motion for Confidential Treatment

ORDER NO. 26,596

March 25, 2022

In this order, the Commission authorizes Pittsfield Aqueduct Company, Inc. (PAC or the Company) to recoup approximately \$36,290, the difference between temporary and permanent rates based on actual customer usage, and recovery of \$34,198.60 in rate case expenses on a per-customer basis. While the surcharge will vary for customers depending on usage, general metered customers using an average of 5.19 ccf per month will be assessed \$7.20 per month for twelve months as a result of this order. The Commission authorizes these charges to begin with bills rendered on or after May 1, 2022. The Commission also grants in part a motion for confidential treatment of the Company's attorneys' billing rates.

I. PROCEDURAL HISTORY

On April 8, 2021, the Commission approved temporary rates set at the level of its current rates, on a service rendered basis, effective December 17, 2020. *Pittsfield Aqueduct Company, Inc.*, Order No. 26,466 (April 8, 2021).

On November 9, 2021, the Commission approved a 5.45 percent overall revenue increase for PAC. *Pittsfield Aqueduct Company, Inc.*, Order No. 26,544 (November 9, 2021).

The Commission directed PAC to file documentation showing the difference in the actual revenues collected from December 17, 2020, and the revenues that would have been collected under the permanent rates ultimately established in this matter, along with a proposed surcharge for recovering that difference from customers. The Commission also directed PAC to file its request for recovery of rate case expenses.

On December 9, 2021, PAC filed tariff pages demonstrating the temporary and permanent rate difference along with supporting documentation. On December 9, PAC also submitted a request for recovery of its rate case expenses along with a motion for confidential treatment of certain expenses. On December 21, 2021, PAC filed a motion seeking a protective order and confidential treatment of hourly billing rate data associated with contracted legal services. On January 28, 2022, PAC filed a supplemental motion for a protective order and confidential treatment of discovery responses provided by the Company relating to the same expenses.

On February 18, 2022, the New Hampshire Department of Energy (Energy) filed a recommendation for the Commission's consideration regarding rate case expense recovery and revenue recoupment, along with copies of certain discovery responses provided by the Company, including confidential copies of PAC's discovery responses.

II. POSITIONS

A. PAC

PAC proposed temporary to permanent rate recoupment recovery totaling \$36,290.09 related to its base rates. The Company proposed to recoup the amount over a 12-month period. PAC indicated that recoupment charges would vary by usage and that general metered residential customers on average, would be assessed \$2.77 per month in rate recoupments for 12 months.

PAC also proposed recovery of rate case expenses totaling \$34,198.60 over a 12-month period. The Company proposed to recover that amount by collecting \$4.43 per month from each of its customers.

PAC requested confidential treatment of the hourly rates and rate structure associated with outside legal counsel services performed during the course of the rate proceeding. The Company argued that disclosure of its attorneys' hourly rates would cause competitive harm to those attorneys and could have a detrimental effect on the Company's competitive bidding efforts in the future with respect to outside legal services.

B. Department of Energy

The Department of Energy stated that it reviewed PAC's two December 9, 2021, filings for rate case expenses and reconciliation of temporary to permanent rates, as well as PAC's December 21, 2021, motion for protective order and confidential treatment. After propounding discovery, the Department took no exception to the Company's three requests. The Department of Energy also provided copies of discovery responses from the Company, which included questions and responses related to PAC's compliance with the Commission's rules on rate case expense recovery, the Puc 1900 rules. The Department stated that it considers the record on these issues complete for consideration by the Commission.

III. COMMISSION ANALYSIS

A. Temporary-Permanent Rate Recoupment

RSA 378:29 requires the Commission to allow utilities to amortize and recover the difference between temporary and permanent rates over the effective period of the temporary rates if, upon the final disposition of the rate proceeding, the rates ultimately approved exceed the earlier-imposed temporary rates. Here, the temporary

rates, set at the level of existing rates at the time the rate case was filed, were lower than the rates that the Commission ultimately approved. The difference created a revenue shortfall that the Company is entitled to recoup from its customers.

We approve recovery of the proposed revenue differential through 12 monthly surcharges for all of PAC's customers as proposed by the Company.

B. Rate Case Expense Recovery

The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of service appropriate for recovery through rates. *Hampstead Area Water Company, Inc.*, Order No. 26,185 at 4 (October 30, 2018). Consistent with that policy, and NH Code Admin. R. Puc Ch. 1900, we have reviewed PAC's rate case expenses as well as the Department of Energy's position statement, and we find the rate case expenses for PAC of \$34,198.60 to be just and reasonable. We approve the Company's recovery of this amount over a 12-month period through a monthly customer surcharge of \$4.43.

C. Motion for Confidential Treatment

According to PAC, disclosure of its outside attorneys' billing rates may adversely affect the attorneys' competitive position in negotiating with other parties. The Company argues that the billing rates are "confidential, commercial, or financial information" and that confidential treatment of that information would be consistent with RSA 91-A and prior Commission orders.

The New Hampshire Supreme Court and the Commission apply a three-step test to determine whether documents should be kept from disclosure as "confidential, commercial, or financial information" under RSA 91-A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)); *Sprint Communications Co. L.P.*, Order No. 25,607 at 2

(December 19, 2013). Under that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* “Finally, *Lambert* directs the Commission to balance those competing interests and decide whether disclosure is appropriate.” *Id.* (citing *Lambert*, 157 N.H. at 383).

The Commission has previously held hourly billing rate information exempt from disclosure. *See Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,586 at 4-5 (October 22, 2013) (citing *Unitil Energy Systems, Inc.*, Order No. 24,746 (2007)). We find that disclosure of billing rates could result in a competitive disadvantage to PAC’s attorneys. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. PAC has provided total invoice amounts for its attorneys to inform the public of its expenses and we deem this sufficient for purposes of informing the public.

We do not agree, however, that the current redactions are narrowly tailored to the billing rate and billing rate structure information that the Company seeks confidential treatment of. For example, with reference to Attachment DOE 4-1(c): 1) on page 1, the first paragraph contains no confidential information that is not also disclosed elsewhere in the non-confidential portions of the filing; 2) on page 2, the section headers contain no confidential information and the paragraph under the section header Estimated Mix contains no confidential information that is not also disclosed elsewhere in the non-confidential portions of the filing; and 3) on pages 3–5, we can find no confidential interest in the contents the first row and column of the chart, containing only the various titles and categories, but not the values.

We therefore grant the Company’s motion in part and direct the Company to re-evaluate the redactions and re-file a copy of the confidential filing with redactions that

are more narrowly-tailored to only the attorneys' billing rates and billing rate structure.

Consistent with past practice and NH Code Admin. R. 203.08(k), the protective treatment provisions of this Order are subject to the ongoing authority of the Commission, on its own motion, or on the motion of any party or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that PAC is authorized to implement its proposed rate case recoupment surcharge over a 12-month period beginning May 1, 2022, through a monthly customer surcharge based on individual usage, representing the difference between revenues billed by PAC since December 17, 2020, the effective date for temporary rates approved in Commission Order No. 26,466, and the permanent rates approved by Order No. 26,544 on November 9, 2021; and it is

FURTHER ORDERED, that PAC is authorized to surcharge its customers for recoupment of permanent rates as reflected in its revenue recoupment filing, until the full amounts of the respective temporary and permanent rate recoupments are recovered; and it is

FURTHER ORDERED, that PAC is authorized to recover \$34,198.60, representing its prudently incurred rate case expenses; and it is

FURTHER ORDERED, that PAC is authorized to collect a surcharge in the amount of \$4.43 per customer per month, for a 12-month period beginning May 1, 2022, to recover its rate case expenses; and it is

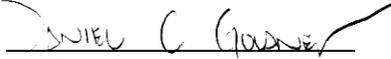
FURTHER ORDERED, that PAC shall file compliance tariffs within 15 calendar days of the date of this order reflecting the recoupment and rate case expense surcharges approved herein; and it is

FURTHER ORDERED, that PAC's motions for confidential treatment are GRANTED IN PART, conditioned on the re-filing within 15 calendar days of the confidential copies of the documents for which confidential treatment is sought, with more narrowly tailored redactions, as described in the body of this order.

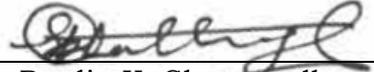
Based upon the foregoing, it is hereby

ORDERED,

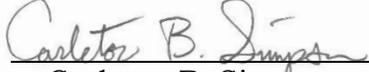
By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 2022.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 20-153

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