

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 24-040

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

Petition for WICA Budget Approval for Project Years 2024-2025

Order *Nisi* on Petition for WICA Budget Approval

O R D E R N O. 27,081

November 25, 2024

Aquarion Water Company of New Hampshire, Inc. (Aquarion) filed a petition for two forms of relief related to the Water Infrastructure Conservation Adjustment (WICA) surcharge. First, Aquarion seeks confirmation that certain water infrastructure projects it completed in 2023 (totaling \$1,589,731) were both prudent, used, and useful under RSA 378:28 and eligible for recovery through the WICA surcharge. Notably, Aquarion is not seeking to adjust its WICA surcharge based on these expenses in this petition but only confirmation that it may recover these costs in future WICA proceedings. Second, Aquarion is seeking initial approval of its estimated WICA budgets for 2024 (ranging from \$629,239 to \$741,550) and 2025 (ranging from \$2,370,000 to \$3,210,000). The New Hampshire Department of Energy (DOE) filed a technical statement, in which it indicated partial support for Aquarion's petition. The DOE has made a limited objection, arguing that the Commission should exclude recovery for two projects that cost a total of \$8,469 from Aquarion's 2023 expenditures on the grounds that the projects were small, routine repairs that are not recoverable through the WICA. As explained below, the Commission DENIES Aquarion's petition with respect to the \$8,469 challenged by the DOE, but otherwise APPROVES the petition.

I. BACKGROUND

In Order No. 25,019 (September 25, 2009), the Commission authorized Aquarion to implement the WICA. The WICA allows Aquarion to establish a surcharge to its rates, within certain limits, to recover for its capital spending on eligible projects completed in service between rate cases. *Id.* at 2. The purpose of the WICA was to both incentivize Aquarion to undertake appropriate water system improvement projects in a timely manner and reduce rate shock to customers. *Id.* Specifically, the WICA surcharge allows Aquarion to recover for non-revenue producing assets, including the replacement of meters, hydrants and service lines, replacement of existing mains and valves that have reached the end of their useful life, main cleaning and relining projects and relocations that are not reimbursable, replacement of prosecution meters, and replacement of pressure-reducing valves. *Id.* Notably, Aquarion may recover costs related to emergency/reactive replacement of service lines, valves, and hydrants, but only for amounts in excess of \$75,000. Order No. 27,659 at 7.

Since initially establishing the WICA, the Commission has renewed and modified the program in Aquarion's subsequent rate cases in Order No. 25,539 (June 28, 2013) in Docket No. DW 12-085 and Order No. 26,659 (July 22, 2022) in Docket No. DW 20-184. Consistent with these orders, and the implementing tariff language, Aquarion is required to make an annual filing consisting of two separate components: (1) its completed water system improvement projects from the prior calendar year, as well as any proposed adjustments to the WICA surcharge to recover for these completed projects; and (2) its proposed projects for the coming three years. *Id.* at 8.

With respect to the first component related to past projects, the Commission must review each of the projects to determine whether they are both eligible for recovery under the WICA and are prudent, used, and useful under RSA 378:28. *See*

id. With this filing, Aquarion is also required to submit any proposed adjustments to the WICA surcharge to recover for the completed expenses over a twelve-month period.

Id. The current recovery period is from April 1 to March 31 of the following year.

Significantly, Aquarion is also required to file a return-on-investment analysis in its WICA submission. *See* Order No. 26,659 at 7. If the analysis indicates that Aquarion exceeded the weighted cost of capital approved in its last rate case (which is currently 7.54 percent) by more than fifty basis points for any calendar year, then the company cannot seek to increase its WICA surcharge that year. *Id.* at 5, 7. Rather, the previously-approved WICA surcharge remains in effect until either the filing of the next WICA adjustment or the next base rate case. *Id.* Under these circumstances, the Commission must still review the completed projects because while Aquarion may not adjust its rates for that particular year, it may include the approved-plant investments for recovery in a future WICA filing. *Id.*

The second component of the WICA filing requires the Commission to review Aquarion's proposed WICA projects for the coming three years. Specifically, in each WICA filing, Aquarion must file its proposed projects for both the subsequent calendar year (Year 1) and the calendar year following Year 1 (Year 2) for Commission review and initial approval of their eligibility for recovery through the WICA surcharge. *Id.* Aquarion must also file its proposed infrastructure projects for the year following Year 2 (Year 3), but this portion of the filing is for information purposes only. *Id.*; *see also* Order No. 26,659 (July 29, 2022) in Docket No. DW 21-020 at 7.

II. AQUARION'S PETITION AND ANALYSIS¹

Consistent with the WICA requirements, Aquarion has submitted a filing that lists both its completed projects from calendar year 2023, as well as its proposed projects for 2024 through 2026. The Commission will review the filing for each year from 2023 through 2025. Because the 2026 information was filed for informational purposes only, the Commission takes no further action with respect to that part of the filing. For each of the relevant years, the Commission will lay out Aquarion's requested relief, the DOE's position, and the Commission's analysis and conclusion in turn. The Commission notes that, as the party seeking to include additional costs in its rate base, Aquarion bears the burden of demonstrating that all costs are recoverable. *See* RSA 378:8.

A. 2023 WICA Expenses

Aquarion first seeks a determination that the projects the company completed in 2023 were prudent, used, and useful and properly included in the costs recoverable through the WICA surcharge. In total, Aquarion seeks approval of \$1,589,731 in capital expenditures related to water infrastructure projects. *See* Testimony of Daniel R. Lawrence, Attachment 1 at 2. The vast majority of that sum was related to work on water mains (\$1,579,918). *Id.* Aquarion also spent \$84,814 on work related to hydrants, service lines, and valves, of which only \$9,814 is recoverable because there is an annual threshold of \$75,000 for projects within this category. Finally, Aquarion's return-on-investment analysis in its filing indicates that it exceeded the 7.54 percent

¹ Order No. 25,019 states that any party "may request a hearing prior to the Commission's granting approval for a project to become eligible for cost recovery through the WICA. The determination as to whether to hold a hearing on the eligibility for any project for WICA cost recovery shall be at the Commission's discretion." No party requested a hearing in this docket, and the Commission does not believe a hearing is necessary. In approving Aquarion's petition, the Commission relies on the representations in Aquarion's petition and the DOE's findings and recommendations.

weighted cost of capital approved in its last rate case by more than 50 basis points, which is why the company did not seek to adjust the WICA surcharge in this filing.

The DOE supports the inclusion of the majority of these projects within the 2023 WICA. However, the DOE opposes the inclusion of two smaller projects to repair sections of two separate water mains that cost a combined total of \$8,469 (the first cost \$5,537 and the second cost \$2,932). The DOE does not argue that these projects were not prudent, used, and useful, but rather that they are ineligible for recovery through the WICA surcharge because the surcharge was not intended to apply to smaller, unplanned repair projects.

In light of the DOE's position, the Commission will first determine whether these projects are recoverable through the WICA surcharge. The Commission will then consider whether all projects recoverable through the WICA surcharge were prudent, used and useful.

i. Costs Recoverable through the WICA Surcharge

The first issue is whether Aquarion may recover for the small repairs on water mains through the WICA surcharge as a water system improvement project. The DOE argues that the primary purpose of the WICA program is to incentivize Aquarion to proactively replace aging water mains and thus improve the reliability and performance of the water system. The DOE represents that the two projects at issue were unplanned, immediately necessary, remedial measures and thus do not fit within the purpose of the WICA surcharge. In addition, the DOE appears to suggest that the two projects should not be included because they were relatively small in scope, with the DOE representing that Aquarion has not historically sought to recover costs related to replacements of less than 50 feet of a water main. It is not clear from the DOE's technical statement whether the costs should be excluded because they are

both emergency repairs and small in scope, or if each of these would be a sufficient basis to exclude the costs.

In response, Aquarion contends that, pursuant to the orders creating the WICA surcharge and the authorizing tariff, the company is entitled to recover for any water “system improvement project.” *Id.* Aquarion acknowledged that this term is not defined, and that it was unaware of an industry standard definition. However, it argued that this term should be reasonably read to include any project that extends the useful life, increases reliability, creates efficiency, or addresses regulatory requirements related to a specific asset or group of assets. Aquarion contends that this reading includes the water main repair projects at issue. In addition, Aquarion notes that while there is an express limitation on recovery for repairs to service lines, valves, and hydrants in the form of the \$75,000 threshold, there is no language addressing limitations on recovery for repairs to water mains. For this reason, Aquarion argues, there is no basis to exclude costs for smaller repairs. Finally, Aquarion argues that the purpose of the WICA is to encourage the company to make timely safety and reliability improvements to its water distribution infrastructure, and that allowing it to recover for expenses related to relatively small repairs furthers this purpose.

Given that the parties’ dispute centers on whether particular costs are recoverable through a rate surcharge authorized by the Commission, the Commission must analyze both its orders approving the surcharge and the tariff language implementing that approval. The interpretation of Commission orders must be based on the plain meaning of the words contained in them. *See Connecticut Valley Electr. Co.*, Order No. 23,939, at (March 29, 2002) (citing *Appeal of Univ. Sys. of N.H.*, 129 N.H. 632, 637 (1987)). Likewise, when interpreting a tariff, the Commission applies the principles of statutory construction and contract interpretation, which requires the

Commission to first look at the plain and ordinary meaning of the terms of the tariff. *Freedom Ring Commc'ns, LLC d/b/a Bayring Commc'ns*, Order No. 24,837, at 40 (March 21, 2008) (citing *City of Rochester v. Corpening*, 153 N.H. 571, 573 (2006)). In the context of contract law, the New Hampshire Supreme Court has stated that, when interpreting the plain language of a written document, an adjudicative body must give the language its reasonable meaning, considering the circumstances under which it was written, and reading the document as a whole. *Birch Broad. v. Capitol Broad. Corp.*, 161 N.H. 192, 196 (2010). While the adjudicator must give the document the meaning intended by the parties when they wrote it, “[a]bsent ambiguity, the . . . intent will be determined from the plain meaning of the language used” *Id.* Statutory interpretation follows similar principles. *See Polonsky v. Town of Bedford*, 171 N.H. 89, 93 (2019).

In the Commission’s view, whether the repairs at issue can be recovered through the WICA surcharge is unclear on the current record. The primary issue is that there is no definition in prior orders of what constitutes a water “system improvement project.” On its face, the language is ambiguous as to whether it would include a remedial, unplanned repair of a water main. This ambiguity is compounded by the fact that it is also unclear whether allowing recovery for such projects would be consistent with the purpose of the WICA surcharge, which is to incentivize Aquarion to replace aging infrastructure in a timely manner. On the one hand, there is less need to incentivize Aquarion to make timely emergency repairs because their nature encourages immediate action. In addition, because Aquarion cannot plan for emergencies, reactive repairs fall outside the general scope of the standard WICA review process, which involves planning for future projects three years in advance and obtaining pre-approval for projects.

On the other hand, there is no language stating that Aquarion cannot recover the costs of emergency repairs through the WICA and unplanned repair projects on water mains could potentially improve water system reliability and thus improve the water system. In addition, it is not clear whether the DOE is arguing that all unplanned repairs should be excluded from the WICA surcharge or only “small” repairs. For example, the DOE’s stresses in its technical statement that the repairs at issue are relatively small, and notes that Aquarion has rarely included costs related to replacement of less than 50 feet of a water main. But the prior orders contain no limitation on recoverable projects based on the size of the project and there is no definition in the prior orders as to what constitutes a “small” repair. Thus, if the DOE’s position is that only small unplanned projects should be excluded, the Commission would need additional explanation to understand that distinction.

Notably, there is an express limitation on the amounts that Aquarion can recover for emergency repairs to valves, service lines, and hydrants, but *not* to water mains. The Commission notes that this provision was first added in Order No. 25,539 in Docket No. DW 12-085, approximately four years after the WICA was first authorized, based on concerns from the Office of the Consumer Advocate that the WICA should not be used to recover *any* costs for emergency/reactive repairs. Ultimately, a limitation in the form of a recovery threshold for hydrants, service lines, and valves was included in the settlement agreement, but there is no explanation as to whether this limitation was intended to limit cost recovery for these repairs specifically or expressly allow them (subject to the threshold) while excluding all other repair costs.

In essence, the Commission believes a more developed legal and factual basis, including information about how Aquarion has historically handled unplanned

repairs, is necessary to conclude whether the costs at issue are recoverable through the WICA. In light of the current ambiguity, the Commission concludes that Aquarion has not met its burden to show that the capital expenditures at issue should be included in its rate base. *See* RSA 378:8. Therefore, the Commission will not authorize Aquarion to recover for these expenses in a future WICA proceeding in this order. The Commission will not preclude Aquarion from seeking to recover these costs in a future WICA filing, however. In order to do so, the company will need to make a definitive showing that the projects are recoverable through the WICA, in a future WICA filing.

ii. Whether the Projects in 2023 were Prudent, Used, and Useful

The Commission must now determine whether the remaining projects, totaling \$1,581,262, that Aquarion completed in 2023 were prudent, used, and useful pursuant to RSA 378:28, and thus permissible for recovery in a future WICA proceeding. The DOE supported a finding that these projects were prudent, used, and useful. Based on the record before it, and in reliance on the DOE's recommendation, the Commission concludes that Aquarion's 2023 water infrastructure projects were prudent, used, and useful. Specifically, the Commission accepts Aquarion's representations that each of these projects was completed in 2023, that they were necessary to improve its water system and prevent the loss of water, and that the cost of each project was reasonable. Accordingly, the Commission authorizes Aquarion to recover \$1,581,262 in water system improvement projects in a future WICA proceeding.

B. 2024 and 2025 Projects

Aquarion next requests that the Commission provide initial approval that its estimated projects for 2024 and 2025 are eligible for recovery through the WICA. For 2024, Aquarion has proposed the repair or replacement of four water main projects at

an estimated price range from \$629,239 to \$741,550. It also estimates spending \$62,000 on projects related to hydrants, service lines, and valves. However, because this amount is less than the \$75,000 threshold for these types of projects, Aquarion would not recover the cost of these projects through the WICA. For 2025, Aquarion has proposed two larger projects related to the repair and replacement of water mains with an estimated cost range of \$2,370,000 to \$3,210,000. It has also proposed projects related to hydrants, service lines, and valves with an estimated cost of \$64,000. Because these estimated costs are below the threshold for these types of projects, Aquarion would not recover these costs through the WICA. The DOE has recommended that the Commission find that the listed projects for both years are eligible for recovery through the WICA and thus approve the petition with respect to these filings.

In reviewing these estimated projects, the Commission's task is to determine whether the listed projects are eligible for recovery through the WICA — i.e., that they are appropriate water system improvement projects. Having reviewed the list of projects, the associated pre-filed testimony of Aquarion's witness, and the DOE's technical analysis, the Commission finds, on a preliminary basis, that Aquarion's proposed projects appear to be eligible for recovery in future WICA proceedings, subject to future determinations that the projects were prudent, used, and useful.

Based upon the foregoing, it is hereby

ORDERED NISI, that the Commission DENIES Aquarion's petition with respect to the \$8,469 challenged by the DOE, but otherwise APPROVES the petition; and it is


FURTHER ORDERED, that Aquarion shall post a copy of this order on the Company's website within two business days of the date of this order, with an affidavit of publication to be filed with this office on or before December 3, 2024; and it is

FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than December 12, 2024 for the Commission's consideration; and it is

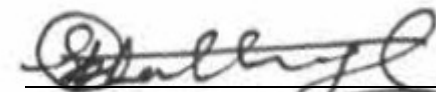
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 19, 2024; and it is

FURTHER ORDERED, that this order shall be effective December 23, 2024, unless Aquarion fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of November, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 24-040

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