

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**DW 18-054
DW 18-161**

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

**Investigation to Determine Rate Effects of
Federal and State Corporate Tax Reductions and
Petition for Approval of
2019 Water Infrastructure and Conservation Adjustment**

**Order *Nisi* Approving 2019 WICA Surcharge and
Creation of Regulatory Liability Accounting for Corporate Income Tax Adjustment**

ORDER NO. 26,245

May 2, 2019

In this order, the Commission approves a temporary 2019 Water Infrastructure and Conservation Adjustment (WICA) surcharge of 6.72 percent for Aquarion Water Company of New Hampshire, Inc. (Aquarion or the Company), effective June 1, 2019, through December 31, 2019. The impact for a typical residential customer using an average 53,300 gallons per year is a monthly bill decrease of \$0.15, from a WICA surcharge of \$3.01 to \$2.86.

The WICA surcharge will become a permanent rate of 7.5 percent on January 1, 2020. The impact for a typical residential customer as of January 1, 2020, is a monthly bill increase of \$0.33, from a WICA surcharge of \$2.86 to \$3.19.

The Commission also approves the creation of a regulatory liability by Aquarion, as of January 1, 2018, to account for the impact of federal and state statutory income tax rate reductions, resulting from the federal 2017 Tax Cuts and Jobs Act (TCJA), and reductions in the New Hampshire Business Profits Tax (BPT) and New Hampshire Business Enterprise Tax (BET). Those tax reductions resulted in an Excess Accumulated Deferred Income Tax (EADIT)

liability owed to customers and a significant annual income tax expense savings from what is included in the current revenue requirement for Aquarion. The Commission approves the recording methods to address the tax law changes as agreed by the parties.

This order is being issued on a *nisi* basis to ensure that all interested persons receive notice of the Commission's determination and have the opportunity to request a hearing prior to the effective date.

I. BACKGROUND AND PROCEDURAL HISTORY

Aquarion is a regulated public utility as defined by RSA 362:2 and RSA 362:4. The Company provides water service to approximately 9,000 customers in the Towns of Hampton, North Hampton, and Rye. In Docket No. DW 08-098, the Commission approved the pilot WICA program, intended to accelerate the replacement of aging infrastructure and allow Aquarion to recover through a monthly surcharge the fixed costs of non-revenue producing capital improvements completed and placed in service. *Aquarion Water Co. of N.H.*, Order No. 25,019 (September 25, 2009). The WICA pilot program was extended and modified in Aquarion's last rate case. *Aquarion Water Co. of N.H., Inc.*, Order No. 25,539 (June 28, 2013). The WICA surcharge is capped at an amount equal to 7.5 percent of its authorized revenue requirement from base rates. *Id.* at 25.

In Docket No. IR 18-001, the Commission opened an investigation into public utility treatment of the effects of the corporate income tax rate reductions resulting from the TCJA, the BPT, and the BET. *Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions*, Order No. 26,096 (January 3, 2018). The Commission requested responses from all regulated public utilities, including Aquarion. *Id.* In its response, filed on April 2, 2018, and

assigned Docket No. DW 18-054, the Company requested that the Commission allow it to reflect the TCJA and state tax reductions in its 2019 WICA surcharge calculation. The Office of the Consumer Advocate (OCA) filed a letter of participation in Docket No. DW 18-054 on April 9, 2018.

On October 16, 2018, Aquarion filed a petition for approval of its 2019 WICA surcharge of 4.43 percent, and the matter was assigned Docket No. DW 18-161. Aquarion's proposed surcharge reflected the cost of its previously approved 2013 through 2018 capital projects. *See Aquarion Water Co. of N.H., Inc.*, Order No. 26,094 (December 29, 2017) (approving the 2018 projects and budget). Aquarion's proposed surcharge also included a credit reflective of the tax savings realized from the TCJA corporate tax reductions. Aquarion originally requested an effective date of January 1, 2019, for the proposed surcharge.

Aquarion also sought approval of its 2019 WICA-eligible capital projects, and approval on a preliminary basis of its 2020 WICA-eligible capital projects. The Company submitted its 2021 WICA-eligible capital projects for informational purposes. Its petition was supported with the pre-filed testimony of Carl McMorrان, its Operations Manager, and Debra Szabo, the Director of Rates and Regulation for its affiliate, Aquarion Water Company of Connecticut, Inc.

On November 9, 2018, the Commission issued an Order of Notice in Docket No. DW 18-161, scheduling a Prehearing Conference and technical session for December 3, 2018. On November 14, 2018, the Town of Hampton (Hampton) petitioned to intervene. The Commission granted Hampton's request at the Prehearing Conference.

The Commission's Audit Staff (Audit Staff) reviewed and verified the costs associated with the 2018 capital project, issuing a report dated November 16, 2018. Commission Staff (Staff) engaged a consultant, Blue Ridge Consulting Services, Inc. (Blue Ridge), which reviewed the effects of the tax-change calculations submitted by the Company in both dockets. Blue Ridge issued its report on January 18, 2019.

On April 15, 2019, Aquarion, Hampton, the OCA, and Staff (collectively, the Settling Parties) filed a Settlement Agreement (Agreement) in Docket Nos. DW 18-054 and DW 18-161, intended as a resolution of both dockets.¹ Audit Staff's report and Blue Ridge's report, referenced above, are both attached to the Agreement.

Aquarion's initial filings and any subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.state.nh.us/Regulatory/Docketbk/2018/18-054.html> and <http://www.puc.state.nh.us/Regulatory/Docketbk/2018/18-161.html>.

II. SETTLEMENT AGREEMENT

In the Agreement, the Settling Parties request that the Commission approve the following:

A. 2018 WICA Capital Project

The Commission should find that the Mill Road main replacement project, the only 2018 WICA-eligible capital project, is complete and in service and the associated plant is prudent, used, and useful. That Commission finding is supported by a memorandum from Staff's

¹ The Office of the Consumer Advocate was a party to DW 18-054, but not a party in DW 18-161.

engineer dated March 12, 2019, which is included in the Agreement. Audit Staff examined and verified Aquarion's costs for that project.

B. 2019 WICA Surcharge and Subsequent Surcharges

Full inclusion of Aquarion's 2018 capital project to the WICA surcharge would result in a surcharge that exceeds the authorized 7.5 percent revenue cap of Aquarion's annual retail water revenues from base rates. The Settling Parties recommend that the Commission allow recovery of Aquarion's 2013-2018 capital investments up to the 7.5 percent revenue cap. The result is a total projected 2019 annual revenue amount of \$520,499, calculated using the new tax rates, to be recovered through the WICA surcharge.

For 2019 only, the projected 2019 WICA revenue requirement should reflect a \$44,302 credit back to customers. That treatment would adjust the 2019 WICA revenue requirement to \$476,197. The credit is the difference between the tax component included in the WICA surcharge collected during 2018, and the tax component which would have been required under the reduced federal and state tax rates that year. The Settling Parties agree that, while Aquarion assessed the authorized WICA surcharge during 2018, pursuant to Order No. 26,094, inclusion of the customer credit in the 2019 WICA surcharge is just and reasonable.

As applied over a 12-month period, the WICA surcharge (including the customer credit) to be assessed during 2019 would be 6.86 percent. Aquarion, however, has been collecting its previously approved 2018 WICA surcharge of 7.08 percent since January 2018 and throughout the duration of the instant proceeding. *See* Order No. 26,094 at 5 (finding surcharge of 7.08 percent just and reasonable). Taking into consideration its estimated 2019 revenue collections to date, a temporary 2019 WICA surcharge of 6.72 percent should be authorized for

the remainder of 2019, from June 1 to December 31. Effective January 1, 2020, Aquarion's authorized WICA surcharge should be reset to 7.5 percent until the resolution of the Company's next general rate case.

During Aquarion's next general rate proceeding, it must provide a reconciliation between the 2019 WICA revenues actually billed and the revenues that would have been billed using the 6.86 percent WICA surcharge for the full 12-month period of 2019. Any difference revealed by that reconciliation will be an adjusting item to be considered in determining Aquarion's next authorized revenue requirement in that case.

The typical residential Aquarion customer using 53,300 gallons of water annually currently pays \$42.53 per month in base rates. That customer also currently pays a 7.08 percent WICA surcharge of \$3.01 per month, for a total monthly bill of \$45.54. Under the proposed temporary 2019 WICA surcharge of 6.72 percent, effective June 1 through December 31, 2019, that customer would pay \$0.15 less for the WICA surcharge, or a monthly WICA surcharge of \$2.86, for a total monthly bill of \$45.39.

Effective January 1, 2020, as the WICA rate increases to 7.5 percent, that customer's WICA surcharge would increase by \$0.33, to \$3.19 per month, for a total monthly bill of \$45.72.

The resulting rates derived from the temporary 2019 WICA surcharge of 6.72 percent and the WICA surcharge of 7.5 percent effective January 1, 2020, are just and reasonable under RSA 374:2 and RSA 378:7.

C. Proposed WICA Projects for 2019 and 2020

The WICA projects proposed for 2019 by Aquarion in its initial filing, presented for the Commission's review and approval, and the proposed projects for 2020, presented for review

and preliminary approval, need not be addressed by the Commission at this time and should be deferred to Aquarion's next rate case.

D. Deferment of Filing for 2020 WICA Surcharge

Aquarion will not file for recovery of further WICA-eligible projects until after its next general rate case, provided the WICA program is extended by the Commission.

E. The WICA Mechanism

The Commission shall determine, during Aquarion's next general rate proceeding, whether the WICA pilot program should be continued as a rate recovery mechanism. Aquarion should provide testimony regarding the effectiveness of the WICA pilot program, as designed in Order Nos. 25,019 and 25,539, and, based on that analysis, propose either continuation or discontinuation of the WICA program.

F. Audit Issues

Resolution of three issues noted in Audit Staff's report were agreed to by the Settling Parties. First, Aquarion agreed to file the required Form E-22 reports, which include the Company's proposed capital expenditures, on a timely basis. Second, Aquarion agreed to correct its WICA tariff to include additional language, as directed by Order No. 25,539.² Third, the Settling Parties agreed to address Aquarion's classification of the costs of hydrant and service additions and replacements in its next general rate proceeding.

² The language to be included states the "first \$50,000 in costs related to the emergency/reactive replacement of services, valves, and hydrants in a given year's WICA filing shall not be eligible for recovery through the WICA surcharge." Order No. 25,539 at 14.

G. Aquarion Rate Case Filing in 2020

Aquarion will file its next full, general rate case no later than 2020, utilizing the prior year as its test year. A cost of service study will be conducted as part of that proceeding, pursuant to the partial settlement agreement approved in Order No. 25,539.

Hampton and Aquarion disagreed on whether the cost of snow removal from Aquarion's fire hydrants, should be included in the cost of service study. The Settling Parties agreed, however, that nothing in the Agreement prohibits Hampton from raising that issue in later proceedings, including in its complaint proceeding in Docket No. DW 19-065.

H. Recovery of Staff Expert Fees in Next General Rate Case

Aquarion will pay the cost incurred by the Commission for its consultant, Blue Ridge, immediately upon demand, pursuant to RSA 365:37. The Commission, furthermore, should order Aquarion to record that cost as a deferred regulatory asset to be considered for recovery in its next full rate proceeding.

I. Resolution of DW 18-054

Consistent with Order No. 26,096, the Commission should order Aquarion to create a regulatory liability, as of January 1, 2018, to account for the impact of the recent federal and state corporate income tax rate reductions. Those tax rate reductions result in both an EADIT liability owed to customers, as well as significant annual tax expense savings reflected in Aquarion's current revenue requirement, originating in 2018.

With regard to the EADIT, the Commission should order Aquarion to record a regulatory liability totaling \$1,271,245. The amortization and resulting credit to customers of the EADIT

liability will be resolved in Aquarion's next general rate proceeding. The Settling Parties anticipate that the total tax-effect amortization of the EADIT in the first year will be approximately \$50,000.

With regard to the recording of annual tax savings reflected in Aquarion's current revenue requirement, Aquarion should record an annual and cumulative regulatory liability of \$293,317 through the effective date of approved permanent base rates in its next full rate proceeding. The Settling Parties estimate that annual entry will result in: a 2018 year-end balance of \$293,317; a 2019 year-end balance of \$586,634; and a 2020 year-end balance of \$879,951. Determination of how those tax savings are incorporated into subsequent customer rates should be deferred until Aquarion's next general rate proceeding.

The Settling Parties agree that the terms and conditions described above fully resolve all issues in Docket No. DW 18-054, and, as such, it is recommended that the Commission close that docket.

III. COMMISSION ANALYSIS

Unless precluded by law, informal disposition by settlement may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to N.H. Code Admin. Rules Puc 203.20(b), the Commission shall approve the disposition of any contested case by settlement "if it determines that the result is just and reasonable and serves the public interest." The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Abenaki Water Co., Inc., and Tioga River Water Co., Inc.,*

Order No. 26,231 at 7 (March 28, 2019). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.*

A. Docket No. DW 18-161: Petition for Approval of 2019 WICA

The Commission's statutory authority includes the power to set utility rates at levels that are "just and reasonable," and allow for the recovery of costs associated with prudent, used, and useful capital improvements. *See* RSA 374:2 (public utilities to provide safe and adequate service at just and reasonable rates); RSA 378:7 (Commission required to determine and fix the utility's just and reasonable or lawful rates); RSA 378:28 (permanent utility rates shall only include a "just and reasonable" return on "just and reasonable" plant, equipment, or capital improvements found to be "prudent, used, and useful"). Reasonable rates result from a ratemaking process that appropriately balances the interests of ratepayers who desire the lowest possible rates and investors who desire rates that are higher. Order No. 26,094 at 4 (citing *Appeal of Conservation Law Found. of New England, Inc.*, 127 N.H. 606, 633 (1986)); RSA 363:17-a.

WICA is a Commission-created rate mechanism primarily intended to promote the necessary replacement or upgrade of aging, non-revenue producing infrastructure by reducing the lag-time between expenditure and recovery of the costs associated with installing such improvements. Order No. 26,094 at 4-5. The relatively small, incremental rate increases associated with the WICA mechanism are intended to mitigate the rate shock that could occur if recovery of project costs were to await litigation of a full rate case. *Id.* at 5.

With that authority and background in mind, we consider the Settling Parties' proposed WICA surcharges for effect in 2019 and 2020. Based on Staff's investigation and recommendations, we find the 2018 WICA capital investment in a main replacement on Mill Street was prudent and is used and useful, pursuant to RSA 378:28.

We agree with the Settling Parties, that the 2019 WICA surcharge should be adjusted to reflect the tax savings realized by the Company in its collection of the 2018 WICA surcharge. The 2018 WICA surcharge was approved before the enactment of the TCJA, and the adjustments to the BPT and the BET. The resulting decreases in federal and state tax expense would have reduced Aquarion's 2018 WICA revenue requirement by \$44,302. The amount of \$44,302 therefore should be credited back to Aquarion's customers through the remainder of 2019. As Aquarion has been collecting the previously approved 2018 WICA surcharge of 7.08 percent throughout the duration of the instant proceeding, a 2019 WICA temporary surcharge of 6.72 percent is just and reasonable, under RSA 374:2 and RSA 378:7, and we therefore approve that temporary surcharge rate. The new temporary surcharge must be applied to each customer's total monthly charge for water service, for service rendered on and after June 1, 2019, through December 31, 2019.

Aquarion, as part of its next general rate proceeding, must provide a reconciliation between the 2019 WICA revenues it actually billed during 2019 and the revenues that would have been billed using the 6.86 percent WICA surcharge calculated for the full 12-month period of 2019. In addition, we direct that any difference revealed by that reconciliation be an adjusting item to be considered in the determination of Aquarion's next authorized revenue requirement.

As the tax savings credit to customers associated with the 2018 WICA surcharge will be fully realized by the end of 2019, Aquarion is further authorized to apply the permanent 2019 WICA surcharge of 7.5 percent as of January 1, 2020. We find placing the surcharge at the 7.5 percent cap in 2020 is just and reasonable under RSA 374:2 and RSA 378:7.

We also agree with the Settling Parties that it is appropriate for Aquarion to file for a general rate proceeding no later than 2020, utilizing the previous year as the test year. The WICA surcharge of 7.5 percent therefore will remain in effect until the conclusion of Aquarion's next general rate proceeding. Aquarion, furthermore, may not file for recovery of additional WICA-eligible projects until the conclusion of its next rate proceeding. The Company's proposed WICA projects for 2019 and 2020 therefore need not be examined by the Commission for approval at this time.

During Aquarion's next general rate proceeding, the Commission will determine if the objectives of the WICA pilot program are being met, and decide if the WICA program should be continued. We direct the Company to file testimony regarding the effectiveness of the WICA program, as contemplated in Order Nos. 25,019 and 25,539. We also direct Aquarion to conduct a cost of service study for that proceeding, as previously directed by the Commission in Docket No. DW 12-085. *See* Order No. 25,539 at 25.

We acknowledge Hampton and Aquarion's disagreement about the inclusion of the cost of snow removal from Aquarion-owned fire hydrants in the cost of service study. We agree with the Settling Parties that this issue may be raised in later proceedings, including Docket No. DW 19-065, Hampton's complaint against Aquarion.

We order Aquarion to pay the cost of Staff's consultant, Blue Ridge, immediately upon demand. *See* RSA 365:37, I ("Whenever any investigation shall be necessary to enable the commission to pass upon any petition for ... any other matter which requires the commission's approval, the petitioner shall pay the expense involved in the investigation of the matters covered by said petitioner, including the amounts expended for experts."). Aquarion must record the payment to Blue Ridge as a deferred regulatory asset. The Company's eligibility to recover those costs will also be examined during the next general rate proceeding.

We agree with the Settling Parties regarding the resolution of Audit Staff's three issues contained in its November 16, 2018, report and order the following: Aquarion must file all required Form E-22 reports on proposed capital expenditures on a timely basis, in accordance with Puc 609.12(a); Aquarion must modify its WICA tariff to include previously-approved language, as directed by Order No. 25,539; and consideration of Aquarion's classification of Hydrant and Service assets, and its recording methods with regard to such assets, will be addressed during the Company's next general rate proceeding.

B. Docket No. DW 18-054: Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions

Pursuant to the Commission's investigation into the effects of enactment of the TCJA, as well as reductions in the BET and BPT rates, initiated by Order No. 26,096, we find Aquarion's creation of a regulatory liability, as of January 1, 2018, to account for those tax reductions to be reasonable. We agree with the Settling Parties that the EADIT liability produced by the tax rate reductions should be credited to customers, and order Aquarion to record a regulatory liability

relative to its EADIT in the amount of \$1,271,245. We further direct that the amortization and credit of the EADIT to customers be resolved in the Company's next general rate proceeding.

We find that the annual tax savings reflected in Aquarion's current revenue requirement of \$293,317, as agreed to by the Settling Parties, are significant enough to warrant a Commission directive. Accordingly, we order the Company to record an annual and cumulative regulatory liability in that amount, from January 1, 2018, through the conclusion of its next rate proceeding. As that amount is cumulative, each year-end balance will increase by \$293,317, as discussed above. Resolution of the tax expense savings will also be addressed in Aquarion's next general rate proceeding.

As all of the issues in Docket No. DW 18-054 have been fully resolved by this order, we further direct that Docket DW 18-054 be closed.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the terms of the Settlement Agreement are APPROVED, as described in this order; and it is

FURTHER ORDERED, that, subject to the effective date below, Aquarion's temporary 2019 Water Infrastructure and Conservation Adjustment surcharge of 6.72 percent is hereby APPROVED for service rendered on and after June 1, 2019; and it is

FURTHER ORDERED, that, subject to the effective date below, Aquarion's WICA surcharge of 7.5 percent is hereby APPROVED for service rendered on and after January 1, 2020, to remain effective until the conclusion of Aquarion's next full rate proceeding; and it is

FURTHER ORDERED, that, as part of its next full rate proceeding, Aquarion shall provide a reconciliation between the 2019 Water Infrastructure and Conservation Adjustment

revenues it actually bills and the WICA revenues that it would have billed using the 6.86 percent WICA surcharge for the full 12-month period of 2019, with the difference in revenues revealed by that reconciliation to be an adjusting item considered in determination of Aquarion's next authorized revenue requirement in the Company's next full rate proceeding; and it is

FURTHER ORDERED, that Aquarion shall file its next full rate proceeding no later than 2020, utilizing the prior year as its test year; and it is

FURTHER ORDERED, that Aquarion shall not file for further recovery of WICA-eligible projects until the conclusion of its next full rate proceeding, if necessary; and it is

FURTHER ORDERED, that Aquarion's proposed WICA projects for 2019 and 2020 need not be examined by the Commission at this time, and such review shall be deferred until its next full rate proceeding; and it is

FURTHER ORDERED, that Aquarion shall file testimony regarding the effectiveness of the WICA pilot program during its next full rate proceeding; and it is

FURTHER ORDERED, that Aquarion shall conduct a cost of service study in connection with its next full rate proceeding; and it is

FURTHER ORDERED, that Aquarion shall pay Staff's consultant, Blue Ridge, immediately upon demand, and record that expense as a deferred regulatory asset to be considered during its next full rate proceeding; and it is

FURTHER ORDERED, that Aquarion shall file all required Form E-22 reports with the Commission on a timely basis in accordance with Puc 609.12(a); and it is

FURTHER ORDERED, that Aquarion shall correct its WICA tariff to include the previously-approved language, as described above; and it is

FURTHER ORDERED, that Aquarion shall create a regulatory liability, as of January 1, 2018, to account for the tax reductions resulting from the enactment of the 2017 Tax Cuts and Jobs Act, and reductions in the New Hampshire Business Profits Tax and Business Enterprise Tax; and it is

FURTHER ORDERED, that Aquarion shall record a regulatory liability for the Excess Accumulated Deferred Income Tax in the amount of \$1,271,245, and any amortization and credit of the EADIT to customers will be resolved in its next full rate proceeding; and it is

FURTHER ORDERED, that Aquarion shall record an annual and cumulative regulatory liability of \$293,317, which represents the annual realized tax savings reflected in its current revenue requirement, from January 1, 2018, through the conclusion of its next full rate proceeding, resulting in a 2018 year-end balance of \$293,317, a 2019 year-end balance of \$586,634, and a 2020 year-end balance of \$879,951; and it is

FURTHER ORDERED, that Docket No. DW 18-054 shall be closed; and it is

FURTHER ORDERED, that Aquarion shall cause a summary of this order to be published in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than May 10, 2019, and to be documented by affidavit filed with the Commission on or before May 14, 2019; 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, which states the reason and basis for a hearing, no later than May 17, 2019, for the Commission's consideration; and it is

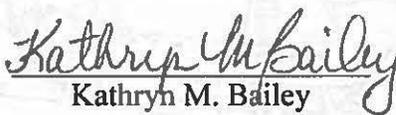
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 24, 2019; and it is

FURTHER ORDERED, that this order shall be effective June 1, 2019, 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; and it is

FURTHER ORDERED, that Aquarion shall file a compliance tariff with the Commission on or before June 1, 2019, in accordance with N.H. Code Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this second day of May, 2019.


Martin P. Honigberg
Chairman


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Commissioner


Michael S. Giaimo
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Attested by:


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