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May 16, 2019

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DW 19-065
Town of Hampton
RSA 365 Complaint re Aquarion Water Company of New Hampshire

Dear Ms. Howland:

The purpose of this letter is to communicate, on behalf of the residential customers of the above-referenced utility, the position of the Office of the Consumer Advocate (OCA) on the matters raised in the RSA 365 complaint filed on March 27, 2019 by the Town of Hampton (Hampton). The OCA has reviewed the complaint, the response filed by Aquarion Water Company of New Hampshire (Aquarion) on April 16, 2019 as directed by the Commission, and a rebuttal pleading dated May 16, 2019 from Hampton.

In the opinion of the OCA, Hampton's complaint is devoid of merit and should be dismissed rather than committed to further proceedings pursuant to RSA 365:4.

Hampton requests that the Commission order the utility to make refunds to customers because it is earning a return on equity (ROE) in excess of the one allowed in the utility's most recent rate case. It is the OCA's understanding that when the Commission decides a rate case, it is *not* determining that any subsequent deviation from the allowed ROE by the utility is a sanctionable violation of the Commission's ruling. If it were otherwise, then any time a utility failed to earn its allowed ROE – a very common condition, if only because of inflationary pressure – the Commission would be obliged to order an immediate rate *increase*. Instead, as we understand the applicable principles of cost-of-service ratemaking, the allowed ROE is simply an input in the Commission's determination of just and reasonable rates – and it is the *rates* (as reflected in the resulting tariff revisions) that the utility is obliged to treat as having the force and effect of law.

Hampton argues in the second count of its complaint that Aquarion is illegally refusing to clear snow, at the utility's expense, from the Company's fire hydrants in the municipality. In support of this proposition, Hampton relies on a 1952 decision of the New Hampshire Supreme Court to the effect that tax money cannot be expended for the advantage of private individuals, including a corporation such as Aquarion, without violating Part 2 Article 5 of the New Hampshire Constitution. The OCA is unable to understand how that unassailable principle applies to this situation, inasmuch as it is not Aquarion but, rather, the property owners of the municipality who benefit from fire protection (and thus hydrants that can be operated quickly without emergency snow shoveling). To the best of the OCA's knowledge, the utility's fire protection tariff does not oblige Aquarion to provide routine clearance of snow from its fire hydrants; the tariff has the force and effect of law but there does not appear to be a credible claim that Aquarion is violating any tariff provisions.

As you know, legal costs incurred by utilities are generally recoverable from utility customers, including the residential ratepayers whose interests are represented by the OCA. With that in mind, the OCA urges the Commission to dismiss Hampton's complaint at the earliest possible juncture.

However, the OCA also requests that the Commission exercise its authority under RSA 378:7 to commence a general rate proceeding immediately to address the over-earning situation described in the memorandum from Chief Auditor Moran appended to the Hampton complaint. The statute requires the Commission to take such action "[w]henver" rates are unjust and unreasonable, and over-earning is the quintessence of rates that are unjust and unreasonable because they are excessive. The settlement agreement recently approved on a *nisi* basis via Order No. 26,245 (May 2, 2019) in Docket No. DW 18-161 (the Aquarion WICA proceeding) requires Aquarion to file a full rate case "no later than 2020." Nothing in the settlement agreement precludes the Commission from ordering Aquarion to file a full rate case *sooner* than 2020 – and that is exactly what the Commission should do, particularly if the over-earning has continued beyond the period covered in Chief Auditor Moran's memorandum.

Thank you for considering our views as the Commission considers how to act on the Town of Hampton's complaint.

Sincerely,



D. Maurice Kreis
Consumer Advocate

cc: Service List (via e-mail)