

ATTACHMENTS

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CHAPTER Puc 200 PROCEDURAL RULES

PART Puc 204 COMPLAINTS AGAINST PUBLIC UTILITIES

Puc 204.01 Submission of Formal Complaints.

(a) Any person wishing to make a formal complaint to the commission regarding an entity over which the commission has jurisdiction shall do so by filing the complaint in writing with the executive director pursuant to Puc 203.02.

(b) The provisions of Puc 203 shall not apply to complaints filed pursuant to this rule unless the commission institutes adjudicative proceedings pursuant to Puc 204.05.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97, EXPIRED: 8-19-05

New. #8420, INTERIM, eff 8-23-05, EXPIRED: 2-19-06

New. #8657-B, eff 6-10-06; ss by #10797-A, *eff 3-18-15*

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Puc 204.02 Complaints Regarding Utilities.

(a) Upon receipt of a complaint pursuant to Puc 204.01, and over which the commission has jurisdiction, the commission shall cause a copy of the complaint to be forwarded to the utility named in the complaint.

(b) The utility shall provide a written response to the complaint by the date specified in the letter, or, when no date is specified in the letter, no later than 10 days from the date the complaint is received by the utility.

(c) The response required by (b) above shall include a description of all steps taken by the utility to resolve the complaint and shall be furnished to the complainant as well as the commission.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

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Puc 204.03 Review of Complaints by Utilities.

(a) A utility shall consider all complaints forwarded to it pursuant to Puc 204.02 and thereafter:

(1) Make any reparations, cease committing any violations, and take any other appropriate actions (as provided by RSA 365:3); or

(2) Advise the commission and the complainant that it disputes the complaint.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

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New. #8657-B, eff 6-10-06; ss by #10797-A, *eff 3-18-15*

Puc 204.04 Investigation.

(a) When a utility has reviewed and responded to a complaint pursuant to Puc 204.02 and Puc 204.03, a complainant not satisfied with the utility's response shall so advise the commission.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) If it appears to the commission that there may be a basis for the complainant's dispute, the commission shall conduct an independent investigation pursuant to RSA 365:4.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97, EXPIRED: 8-19-05

New. #8420, INTERIM, eff 8-23-05, EXPIRED: 2-19-06

New. #8657-B, eff 6-10-06; ss by #10797-A, eff 3-18-15

Puc 204.05 Adjudicative Proceedings. The commission shall commence adjudicative proceedings to resolve a complaint against a utility when it determines after an investigation conducted pursuant to Puc 204.04:

(a) That a complaint might warrant further action against a utility; or

(b) A customer has exhausted all remedies available under Puc 1200 and requests a hearing.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97, EXPIRED: 8-19-05

New. #8420, INTERIM, eff 8-23-05, EXPIRED: 2-19-06

New. #8657-B, eff 6-10-06; ss by #10797-A, eff 3-18-15

Puc 204.06 Investigations Initiated by the Commission. Nothing in this part shall limit the commission's authority to investigate or make inquiry of a public utility pursuant to RSA 365:5.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97, EXPIRED: 8-19-05

New. #8420, INTERIM, eff 8-23-05, EXPIRED: 2-19-06

New. #8657-B, eff 6-10-06; ss by #10797-A, eff 3-18-15

Puc 204.07 Complaints Regarding Non-Utilities. For all other complaints filed pursuant to Puc 204.01 over which the commission has jurisdiction, the provisions of Puc 204.02 through 204.06 shall apply to entities that are not public utilities to the same extent as if such entities were public utilities.

Source. #8657-B, eff 6-10-06; ss by #10797-A, eff 3-18-15

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 12-085

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

Notice of Intent to File Rate Schedules

Order Approving Permanent Rates

ORDER NO. 25,539

June 28, 2013

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A., by Patrick H. Taylor, Esq., and Steven V. Camerino, Esq. for Aquarion Water Company of New Hampshire; Town of Hampton by Mark S. Gearreald, Esq.; Donahue, Tucker and Ciandella, P.A., by John J. Ratigan, Esq. for Town of North Hampton; Office of the Consumer Advocate by Rorie E.P. Hollenberg, Esq. on behalf of residential ratepayers; and Staff of the Public Utilities Commission by Marcia A. Brown, Esq.

I. PROCEDURAL HISTORY

Aquarion Water Company of New Hampshire, Inc. (Aquarion or Company) provides water service to approximately 9,100 customers in the towns of Hampton, North Hampton, and Rye. On April 4, 2012, Aquarion filed a notice of intent to increase its rates and file rate schedules. On May 14, 2012, Aquarion filed its schedules, testimony, and supporting materials to permanently increase its revenue requirement by \$1,113,931. Aquarion also filed a petition for temporary rates to increase its revenue requirement by \$732,078 pending the review of its proposed permanent rates.

Aquarion requested that the proposed temporary rates be made effective for service rendered on or after July 1, 2012. In support of its temporary rate request, Aquarion stated that its overall rate of return for the test year ending December 31, 2011, had declined to 5.23%, and was 249 basis points lower than its last authorized overall return of 7.72%. Aquarion attributed

the deterioration in its overall rate of return to increases in its operation and maintenance expenses, increases in property and similar taxes, and reductions in sales revenues.

On May 24, 2012, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. The Town of Hampton (Hampton) petitioned to intervene on July 5, 2012. On June 12, 2012, the Commission issued Order No. 25,373 suspending the proposed tariffs and scheduling a prehearing conference for July 11, 2012, to be followed by a technical session. The Commission granted Hampton's intervention request at the prehearing conference and noted the Office of Consumer Advocate's intention to participate pursuant to RSA 363:28.

On June 14, 2012, Aquarion filed a motion to waive Puc 1203.02(d) requiring that notice be distributed to Aquarion customers no later than 30 calendar days from the date of filing. Aquarion stated that it was working with Staff regarding approval and method of delivery of the proposed statement to its customers, and requested an extension until July 1, 2012 to finalize the notice. The Commission granted Aquarion's request for an extension by Secretarial Letter dated July 3, 2012.

On July 12, 2012, Staff filed a proposed procedural schedule that included an August 30, 2012 hearing on temporary rates, which the Commission approved on July 16, 2012. The hearing on temporary rates was subsequently rescheduled to August 28, 2012. On August 20, 2012, Aquarion filed a settlement agreement reached with the Staff regarding temporary rates and at hearing, Staff and the parties presented testimony and exhibits in support of the settlement agreement.

On August 31, 2012, the Town of North Hampton (North Hampton) filed a Partially-Assented to Motion to Intervene. North Hampton stated that because Aquarion provides water

service in the Town of North Hampton, the proceeding will affect the rights, duties, privileges, immunities, and substantial interests of its citizenry. Aquarion assented to the motion and the Commission did not receive any objections to the request.

On September 18, 2012, the Commission approved through Order No. 25,412, North Hampton's intervention as well as an 8.8% temporary rate increase for Aquarion, effective for service rendered on or after July 1, 2012.

The Commission held a public hearing in Hampton on November 28, 2012 and received comments from the public.

The parties conducted discovery pursuant to the approved procedural schedule and on January 11, 2013, Hampton filed the testimony of David C. Parcell, Frederick W. Welch, and Philip W. Bean. OCA filed the testimony of Scott J. Rubin. Staff filed the testimony of Mark A. Naylor and Jayson P. Laflamme. On January 14, 2013, OCA filed the testimony of Donna L. McFarland. OCA filed corrected testimony of Ms. McFarland on February 7, 2013 and Hampton filed corrected testimony of Mr. Parcell and Mr. Welch on February 22, 2013. North Hampton did not file testimony but supported the testimony of Mr. Parcell.

On March 6, 2013, Aquarion filed rebuttal testimony of Aquarion employees Troy Dixon and Carl McMorran as well as testimony of Pauline Ahern, a principal of AUS Consultants, on the issue of cost of capital. On March 7, 2013, Aquarion filed testimony of John Walsh to adopt the pre-filed testimony of Harry C. Hibbard. On April 8, 2013, Hampton filed the surrebuttal testimony of David C. Parcell. Subsequent to the testimony, Staff and the parties amended the procedural schedule to accommodate further settlement discussions and ultimately, the Commission held a duly-noticed hearing on May 23 and 24, 2013.

On May 13, 2013, Aquarion filed a motion for protective order concerning confidential responses to discovery requests. The Commission granted the motion at hearing. On May 22, 2013, Aquarion filed a partial settlement agreement among Aquarion, the OCA and Staff addressing all issues except the appropriate return on equity. On May 23, 2013, North Hampton filed the testimony of Robert Landman and explained that it had distributed the testimony to Staff and the parties in accordance with the procedural schedule, however, it had failed to file it with the Commission. Staff and the parties did not object to the testimony.

On May 31, 2013, Aquarion filed revised testimony of Ms. Ahern to reflect corrections that were made at hearing. Aquarion also filed responses to record requests: Exhibits 20 and 24. On May 31, 2013, Staff filed its response to a record request for which Exhibit 33 had been reserved.

On June 6, 2013, North Hampton filed its closing statement. On June 7, 2013, Staff, the OCA, Hampton, and Aquarion filed closing statements.

II. POSITIONS OF THE PARTIES AND STAFF

A. Aquarion

Aquarion agreed to the proposed revenue requirement in the partial settlement agreement, however, it did not reach agreement with Staff and the other parties on the issue of the cost of equity which is a critical component of the revenue requirement. Aquarion, through the testimony of Troy Dixon, proposed a 10.25% return on equity. Mr. Dixon stated that this rate was approved by the Massachusetts Department of Public Utilities (MDPU) in Aquarion's recent rate case. Mr. Dixon did not perform a Discounted Cash Flow (DCF), Capital Asset Pricing Model (CAPM), or comparable earnings analysis to determine the proposed return on equity.

Through the rebuttal testimony of Ms. Ahern, Aquarion argued that the return on equity calculated by Mr. Parcell was in error. Aquarion argued that Mr. Parcell used a natural gas distribution proxy group and that such a proxy group was inappropriate in that it did not reflect the greater business risk associated with water utilities. She stated, for instance, that water utility assets have longer capital recovery periods and, therefore, lower depreciation rates. Water utilities have fewer pass-through rate adjustments than gas and electric utilities. Ms. Ahern stated that the DCF model cannot be used as an estimate of the cost of equity for a utility when the market price of the utility stocks exceeds the book value. She criticized the DCF model as understating the true cost of equity. With Ms. Ahern's corrections to Mr. Parcell's DCF model, Aquarion stated the DCF produces a cost of equity range of 9.32% to 9.54%, with 9.43% as the midpoint. With respect to Mr. Parcell's use of the CAPM model, Ms. Ahern criticized Mr. Parcell's reliance on U.S. Treasury Bonds and stated that 20-year U.S. Treasury Bonds cannot recognize the risk of a particular company or industry because it reflects the risk of the U.S. Government. Ms. Ahern testified that Mr. Parcell's CAPM analysis was flawed in three respects: 1) he incorrectly relied on a historical risk-free rate despite the fact that both ratemaking and cost of capital are prospective; 2) he incorrectly calculated his market equity risk premium by relying upon the wrong indicators; and 3) he did not employ a prospective, or forward-looking equity risk premium. Ms. Ahern also stated that Mr. Parcell did not use an empirical CAPM analysis despite the fact that empirical evidence indicates that the low-beta securities earn returns higher than what the CAPM predicts and high-beta securities earn less. Ms. Ahern was also critical of Mr. Parcell's comparable earnings analysis. In conclusion, Ms. Ahern testified that, after her corrections, Mr. Parcell's CAPM should have produced a cost of equity rate of 10.37%. She then added to the DCF and CAPM rates a financial risk adjustment

of 0.86% due to the Company's debt to equity ratio of approximately 60/40 and business risk adjustment of 0.40% due to the Company's small size, relative to larger water utilities in the proxy sample, producing the following: DCF of 10.58% to 10.80% and a CAPM of 11.63%. Among the proposed changes to its tariff, Aquarion included, under Miscellaneous Charges, a Missed Appointment fee of \$44 for customers who are not present at the time of a scheduled appointment and a Collect-at-the-Door fee of \$44 for customers who make payment to a Company representative at their premises to avoid termination of service.

B. Town of Hampton

Hampton opposed the rate increase and revenue requirement being sought by Aquarion in this case on the grounds of three issues.

First, Hampton argued that the increased rates that Aquarion is now seeking are excessive and the frequency of Aquarion's rate cases is too great for Hampton ratepayers; many of whom are on fixed or depressed incomes due to the current economic climate. Hampton contends that prior to 2006, the intervals between rate cases were 8 and 6 years; however, it now intends to file for rate increases every three years. In addition, the rate increases either granted or proposed by Aquarion in its last three rate cases (including the instant case) constituted double-digit percentage increases: 18.64% in 2006, 17.44% in 2009 and 17.71% currently. In addition, Hampton further emphasized that Aquarion's current rate request comes after three Water Infrastructure and Conservation Adjustments (WICA) approved by the Commission. Hampton stated that one of the original goals of the WICA program was to extend the amount of time between full rate cases. Hampton requested that if the Commission does approve a rate increase for Aquarion in this case, that it limit the resulting percentage increase to fewer than double digits.

At hearing, Hampton's witness, Frederick Welch, recommended the WICA projects be paid through bonds so that at the end of the bond period, assuming they were short-term bonds, the bond and the expenses would disappear. This would help reduce rate increases to customers. Hearing Transcript of May 23, 2013 at 138.

Second, Hampton asserted that Aquarion should not be allowed to continue to collect increased revenues that result from a decline in water consumption due to water conservation efforts undertaken by its customers. Hampton stated that \$214,000, or 19.3%, of Aquarion's total proposed revenue increase is the result of this decline in revenues related to customer conservation efforts. Hampton further argued that the Commission itself voiced concern over this issue early on in the proceeding and charged Aquarion to address it on the record. Hampton contends that though Aquarion could have addressed the issue by proposing a more equitable rate design, it failed to do so and thus has not been responsive to the Commission's charge. Therefore, it is Hampton's position that Aquarion should not be rewarded with an increased revenue requirement which fully reimburses Aquarion for its lost revenues due to consumer conservation efforts.

Third, Hampton argued that the return on equity in this case should be 9.3% and not 10.25% as proposed by Aquarion. Hampton contends that Aquarion has not satisfied its burden of proof enunciated in RSA 378:8, in order to justify its proposed return on equity of 10.25% because it did not retain a cost of equity expert. Conversely, Hampton did engage a cost of equity expert who, in testimony, derived a recommended return on equity of 8.3% based upon an average of three methodologies: DCF, CAPM, and Comparable Earnings. Hampton acknowledged that the Commission traditionally utilizes DCF in determining return on equity and that other methodologies are used to test the reasonableness of the results. The DCF

methodology employed by Hampton's cost of equity expert yielded a range of 9.0% to 9.6% with a mid-point of 9.3%. Hampton further contends that the cost of equity expert engaged by Aquarion later in the proceeding ultimately derived a DCF within this same range, between 9.32% and 9.54% with a mid-point of 9.43%. In response to Aquarion's cost of equity expert's contention that the DCF should be adjusted upward in order to account for greater risk due to the Company's smaller size, Hampton contends that Aquarion is, in fact, part of a greater conglomerate of companies and that its capital structure is intertwined with and dependent on its parent(s). Hampton requests that the Commission reject Aquarion's proposed 10.25% return on equity and, instead, approve an return on equity no greater than 9.3% if not the 8.3% return on equity originally recommended by Hampton's cost of equity expert.

C. Town of North Hampton

North Hampton agreed with Hampton's recommendation on a return on equity of 9.3% for the reasons stated by Mr. Parcell. With respect to the rate design relative to public fire protection, North Hampton requested the Commission not change the rate design approved in Aquarion's last rate case, Docket No. DW 08-098. In that 2008 docket, the Commission approved two deviations from the 2005 cost of service study. One deviation was to allocate to the fire protection class, revenues resulting from an increase in fees for establishing and restoring service. The second deviation was to reduce the allocation of the full cost of public fire protection from 75% to 70%. With respect to the WICA program, North Hampton supports the continuation of the WICA program although it expressed concern that the cap on expenditures needs more evaluation to ensure it is not thwarting the goals of the WICA program.

D. Office of the Consumer Advocate

The OCA's position in pre-filed testimony differed somewhat from its final position at hearing and thus, the OCA requests the following relief from the Commission:

1. Partial Settlement Terms Approve and incorporate into the final order the terms of the partial settlement. The OCA stated that the partial settlement secures value for customers in the form of requiring Aquarion to file a cost of service study in its next base rate case. This cost of service study will provide an informed basis for cost-based rates going forward. The partial settlement improves the WICA pilot by responding to the OCA's concerns that the WICA only be used for planned, incremental capital expenditures for safety and reliability purposes. The partial settlement includes improvements to annual WICA reporting requirements and this will better inform the Commission's WICA decisions as well as improve transparency of the WICA pilot program and cost recovery.

2. Return on Equity The OCA requests the Commission approve a return on equity of 9.365%, which represents the unadjusted mid-point of the Mr. Parcell and Ms. Ahern's DCF mid-points and, when used in conjunction with the terms of the partial settlement, results in a just and reasonable revenue requirement. The OCA stated that one of the cost of equity experts is aligned with the interests of Aquarion's shareholders and the other expert is aligned with the interests of customers, thus, a mid-point would be appropriate. The ranges from each expert were close numerically: Mr. Parcell's DCF range was 9.0% to 9.6% (9.3% mid-point); and Ms. Ahern's corrected DCF range was 9.32% to 9.54% (9.43% mid-point). The OCA argued that the Commission should reject Aquarion's request to adjust the DCF for one or more risk factors. According to Mr. Parcell, the proposed financial and business risk adjustments are not appropriately applied in the Company's circumstances. Second, the capital structure of the

Company is complex due to parent/affiliate interrelations that are not transparent or capable of evaluation. Third, the Company is in control of its financial and corporate structures (and the information it shares about these structures) and it has not shown that just and reasonable rates require risk adjustments to its DCF return on equity on account of its strategic business choices about these structures. For these reasons, the OCA recommended the Commission reject Aquarion's proposed adjustments to the DCF model.

3. Public Fire Protection Cost Allocation The OCA recommended the Commission deny North Hampton's request to reduce the public fire protection class's allocation of the revenue requirement increase and instead allocate the rate increase equally across all the customer classes. The OCA asserted that North Hampton did not provide cost support for its position.

The OCA stated that the equal allocation of the Company's revenue requirement increase is not precluded by the language in the Commission's order approving the settlement of the Company's last rate case. The OCA argued that North Hampton has not quantified what metered rates would be if its proposal is adopted and what they would be if its proposal is not adopted. Further, North Hampton has not quantified how much money would be shifted from its public fire allocation to the allocation to other customers if its proposal is approved. North Hampton has not shown that the Company's proposed public fire rates exceed the cost of service for fire protection or that its fire flow requirements are such that it is paying for more fire protection than it should. Lastly, North Hampton has not considered alternatives for recovering the costs of public fire protection, such as assessing only those taxpayers who are customers of the Company.

E. Staff

Staff filed the testimony of Mark A. Naylor, Director of the Commission's Gas & Water Division, and Jayson P. Laflamme, Utility Analyst in the Gas & Water Division. Mr. Naylor provided testimony on the issue of the continuation of Aquarion's WICA program as a permanent tariff provision; issues related to cost of capital including the impact on the equity return with a WICA provision, and inclusion of \$1 million that Aquarion excluded from its capital structure; the use of a step adjustment to "zero out" Aquarion's current WICA surcharge; issues related to the impact of declines in water sales; and issues relative to fire protection rates. Mr. Laflamme provided testimony on new permanent rates for Aquarion, as well as on a proposed step adjustment for recovery of current WICA revenues in permanent rates.

Mr. Naylor summarized the WICA program that has been in place as a pilot program since 2009, and stated that Staff believes there has not been adequate time for a full evaluation of the program. While Staff believes that one objective of the program has been met, that of accelerating the replacement of aging infrastructure, and one objective has not been met, that of extending time between full rate cases, other WICA objectives cannot yet be evaluated. These include whether a WICA program reduces rate shock to customers, and the reduction of water loss and greater reliability of the distribution system. Staff recommends a continuation of the WICA as a pilot program through the next rate case cycle so that a more extensive evaluation of the WICA pilot program can be made. Mr. Naylor also suggested that, with a WICA in place, a utility's risk is reduced through enhanced cash flow, and thus its equity return should be lower to reflect this. With regard to the use of a step adjustment to permanent rates to bring the WICA surcharge back to zero, Staff believes this is consistent with the Company's tariff, but suggests

the updated cost of capital found in this proceeding should be used in calculating the step adjustment revenues.

Staff testified that it believes that \$1 million in debt Aquarion excluded from its capital structure should be included, stating that the Company is obligated to pay the loan and associated interest, and that in its petition for approval of the total of \$5 million, Aquarion cited the lower cost of debt it would produce. With respect to the issue of declining sales and the impact on the Company's revenues, Staff noted that declining sales are a national trend, have many causes, and create upward pressure on customer rates. Staff indicated, however, that it did not recommend that the Commission deviate from using test year sales to set new permanent rates, as consistency is an important component of rate setting. Finally, as a result of comments at the public comment hearing held in this proceeding in the Town of Hampton, Staff testified regarding fire protection costs and hydrant rates. Staff explained that fire rates are calculated differently from metered rates, and are a function of system capacity to provide fire flows. Staff cautioned against comparing fire costs, or hydrant rates, from one water system to another, and stated that many factors can cause such rates to differ widely among systems.

Mr. Laflamme provided Staff's recommendation for a revenue requirement for Aquarion in the amount of \$6,944,483, an increase of 14.09% over its test year. Staff recommended a rate base of \$22,507,605 and an overall rate of return of 7.31%. Mr. Laflamme also recommended that the WICA surcharge be "zeroed out" as called for in the Company's WICA tariff provision, with a step adjustment for the 2012 WICA plant additions to be effective at the date the Commission issues its final order. Staff recommended that the rate of return to be applied to the step adjustment assets be that return established by the Commission in this proceeding. Staff also recommended that accumulated depreciation be applied to the calculation of the step

adjustment revenues, consistent with step adjustments the Commission has approved in other dockets.

At hearing the Staff supported the partial settlement agreement presented by Aquarion, Staff, and the OCA. Because the partial settlement agreement did not provide a settlement on the cost of equity capital, Staff continued to recommend that the Commission take into account that with a continuation of a WICA program it would be appropriate to set a cost of equity rate below that found in Aquarion's previous rate case, to reflect the reduction of risk inherent in the WICA process.

III. TERMS OF PARTIAL SETTLEMENT AGREEMENT

Staff, the OCA, and Aquarion reached agreement on certain issues described below.

Revenue Requirement

The Company's revenue requirement shall be determined in accordance with the schedules submitted by the Company in response to Data Request Staff 3-11 and included with the prefiled testimony of Staff witness Jayson Laflamme, subject to the adjustments proposed by Mr. Laflamme, except that the return on equity shall be as determined by the Commission in this proceeding, and the revenue requirement shall be subject to the adjustments set forth below:

1. The Company's 2012 year end capital structure of 59.24% debt, 0.01% Preferred Stock, and 40.75% equity should be used for ratemaking purposes in this case. The weighted average cost of debt to be used in determining the Company's overall weighted average cost of capital shall be 6.05%.
2. The Company's pro forma property tax expenses should be reduced by \$14,525 to reflect the actual amount of municipal property taxes assessed to the Company in 2012.
3. The Company withdraws its request for recovery through a deferred asset of the Right of Way tax first assessed by the Town of Hampton in 2011. This results in a reduction of \$24,464 in the revenue requirement during the period that such deferral would have been amortized under the Company's original proposal.
4. \$63,512 of the Company's revenue requirement, which represents the annual amount of the Right of Way tax assessed by Hampton, will be reconciled back to April 1, 2013, rather than to the effective date of temporary rates. However, in the event that the Town of Hampton successfully appeals the recent Superior

Court order finding the 2011 and 2012 ROW tax to be illegal¹, the Company shall have the right to treat nine months of the 2012 tax as a deferred expense that it may recover in its next base rate case.

5. The OCA withdraws its request that a portion of the Company's employee wage and incentive compensation be excluded from the revenue requirement. Furthermore, the OCA agrees that there is an affiliate agreement between the Company and Aquarion Water Company regarding the provision of certain services by employees of Aquarion Water Company of Massachusetts to Aquarion Water Company of New Hampshire, and as such withdraws its request for exclusion of \$18,000 in affiliate employee wage expense in the Company's revenue requirement.

WICA

6. Subject to the changes set forth below, the OCA does not object to the deferral of the evaluation and a continuation of the Company's WICA program on a pilot basis until it is evaluated in the Company's next base rate case.

7. The Company's WICA tariff page will be amended to remove customer meters from the list of eligible infrastructure improvements.

8. The Company's WICA tariff page will be amended to include the following language: 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.

9. The Company will provide an updated main replacement prioritization analysis and updated infrastructure inventory in its annual WICA filing.

10. The Commission should approve a step adjustment pursuant to which the current WICA revenue requirement related to 2012 WICA capital projects is included in permanent rates and the WICA surcharge is reset to zero as of the date new permanent rates are implemented. The step adjustment would be calculated using the rate of return approved in DW 12-085 and the amount of the WICA surcharge included in base rates would not be included in the reconciliation of permanent rates with temporary rates. The Company agrees to provide documentation of its calculation of the step adjustment along with its calculation of its new permanent rate at the time it submits its compliance tariff.

11. The "Missed Appointment Fee" proposed in the Company's filing (Testimony of Troy Dixon, page 90 of 171) will be reciprocal such that a customer is compensated in an amount equal to the Missed Appointment fee if the Company fails to appear for a scheduled service call. In addition, the Company shall clearly notify customers of the fee when the service appointment is made.

¹ At hearing, Hampton testified that the Board of Selectmen voted not to appeal the Superior Court decision. 5/23/13 Tr. at 130 lines 4-12.

12. The “Collect at the Door Fee” proposed in the Company’s filing (Testimony of Troy Dixon, page 90 of 171) will not be imposed the first time in any calendar year that a customer does not pay an outstanding bill until a technician arrives at the customer’s premises to perform a shut-off.

13. The Company will file a cost of service study with its next rate case.

IV. COMMISSION ANALYSIS

RSA 378:7 authorizes the Commission to fix rates after a hearing upon determining that the rates, fares, and charges are just and reasonable. In determining whether rates are just and reasonable, the Commission must balance the customers’ interest in paying no higher rates than are required with the investors’ interest in obtaining a reasonable return on their investment.

Eastman Sewer Company, Inc., 138 N.H. 221, 225 (1994). Additionally, in circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. N.H. Code Admin. R. Puc 203.20 (b) requires the Commission to determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest.

We apply these standards in connection with our review of the partial settlement agreement, keeping in mind that not all issues in this proceeding were settled. The issue of cost of equity remains contested. The partial settlement agreement and return on equity are inter-related and we must ultimately find that Aquarion’s resulting rates are just and reasonable under RSA 378:7 and RSA 378:28.

A. Cost of Equity

The Commission's method of determining a utility's cost of equity, or return on equity, is well described in *Appeal of Conservation Law Foundation*, 127 N.H. 606, 635 (1986). The Commission is "bound to set a rate of return that falls within a zone of reasonableness, neither so low as to result in a confiscation of company property, nor so high as to result in extortionate charges to customers." *Id.* "A rate falling within that zone should, at a minimum, be sufficient to yield the cost of debt and equity capital necessary to provide the assets required for the discharge of the company's responsibility." *Id.*, citing *New Eng. Tel. & Tel. Co. v. State*, 104 N.H. 229, 232 (1962). An appropriate return on equity is one that will attract capital from the investment community generally, and is not one based on what will motivate a holding company to invest its discretionary capital in a utility subsidiary. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972, 94 NH PUC 256, 285 (2009).

We understand that Aquarion is obliged to invest large sums of money toward infrastructure improvements. Aquarion is no different from many other utilities in this regard. Aquarion does, however, have an annual rate increase mechanism allowing for recovery of certain of its infrastructure improvements through the WICA program that is not available to all utilities.

As to the methods of determining the return on equity, the Commission has long favored the use of the DCF method in determining return on equity. The Staff and parties acknowledged this in their closing statements. In *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, the Commission reaffirmed that the "DCF is the most reliable and consistent method in terms of its application and results." *EnergyNorth*, 94 NH PUC at 286. The "DCF remains a widely accepted approach used by regulators here and elsewhere to determine [return on equity]." *Id.* at

286. The Commission follows the traditional approach of relying primarily on the DCF model and using other valid methods as a check on the reasonableness of the DCF result. *Id.* at 287.

We apply these principles to this proceeding.

At hearing, Hampton's expert, David Parcell calculated a cost of equity of 9.0% to 9.6% using the DCF method. His CAPM cost rate was 6.1% and Mr. Parcell testified that he would not recommend this cost figure as it was quite low. Hearing Transcript of May 24, 2013, afternoon, (5/24/13 Tr. PM) at 17, line 16. His comparable earnings model produced a cost range of 9% to 10%. Aquarion's expert, Pauline Ahern, filed testimony correcting perceived errors in Mr. Parcell's testimony and arrived at a cost range of 9.59% to 9.78% using the DCF method. After realizing she had made a mathematical error, however, Ms. Ahern presented at hearing a corrected range of 9.32% to 9.54%, similar to Mr. Parcell's range. Ms. Ahern's CAPM rate was 10.37%.

Ms. Ahern then proposed adding two adjustments to the cost of equity results to account for risk. Aquarion requested neither of these adjustments in its initial filing. To the DCF and CAPM costs of equity, Ms. Ahern added a 0.86% adjustment for financial risk and a 0.40% adjustment for business risk. We discuss these adjustments in greater detail below. Inclusion of the adjustments increased Ms. Ahern's DCF range to 10.58% to 10.80% which is higher than the 10.25% cost of equity proposed in Mr. Dixon's pre-filed testimony. The adjustments increased Ms. Ahern's CAPM cost rate to 11.63%.

We note that Aquarion did not file initial expert testimony on cost of equity. Mr. Dixon proposed 10.25%, not because of any analysis he conducted, but because that was the cost of equity determined in a recent rate case involving Aquarion's Massachusetts affiliate.² Although

² "The Company's proposed return on equity of 10.25%, was based on the authorized return determined in its recently concluded rate case before the Massachusetts Department of Public Utilities (Massachusetts DPU) in

decisions from other regulatory bodies on utility issues and concepts can be instructive, we have ample analytical evidence in the record and thus do not need to rely on the findings of the Massachusetts DPU. Aquarion filed the testimony of Ms. Ahern to rebut the testimony of Mr. Parcell. Hampton filed surrebuttal testimony of Mr. Parcell taking issue with Ms. Ahern's criticisms. The testimony of both witnesses was admitted into evidence at hearing and both were extensively cross-examined.

In reviewing the DCF ranges of both Mr. Parcell and Ms. Ahern, it is remarkable that they are so similar. Although Ms. Ahern and Mr. Parcell held differing opinions on whether one component of growth included in the DCF should be comprised exclusively of analysts' forecasts of earnings per share, as noted by Mr. Parcell, this methodological difference is of no consequence in that the DCF results are essentially the same. 5/24/13 Tr. AM at 102, lines 8-20. Ms. Ahern recommended exclusive reliance of forecasted earnings per share, while Mr. Parcell used a mix of measurements, including analysts' forecasts of earnings per share. We agree that this methodological disagreement is of little significance, given the similarity of the two experts' DCF cost ranges, though we note that over the years the Commission has not relied exclusively on analysts' forecasted earnings per share but instead has considered those forecasts among a mix of measures of growth.

Ms. Ahern advocated for the upper range of Mr. Parcell's DCF results which ranged from 8.3% to 9.6%. Mr. Parcell, himself, recommended a DCF for Aquarion that was in the "upper portion of the broad DCF range" which he stated was 9.0% to 9.6%. Exh. 13 at 19. The OCA suggested adopting the "mid-point of the mid-points" of each of the experts, which would be a

D.P.U. 11-43, which was a fully litigated case. That decision was issued just over one month ago. Given the extremely recent nature of that result, the relatively small size of the Company and the fact that it is smaller than its Massachusetts affiliate, it is reasonable that a return on equity slightly above the average of the Company's surveyed should be authorized." Exh. 5, Testimony of Troy Dixon, page 22.

DCF of 9.365%. In light of the testimony and schedules presented at hearing, as well as our standard approach to DCF analysis, we find the weight of the evidence supports adoption of Mr. Parcell's DCF high-point, for a 9.6% cost of equity for Aquarion.

We note that the DCF cost of equity ranges provided by Mr. Parcell and Ms. Ahern are very similar, before adjustments by Ms. Ahern. The same is not true of the CAPM results, as both experts reached widely divergent results. While we have consistently used the CAPM and other risk premium methods as a check on the DCF results, we find that the DCF results are well supported and documented in this proceeding and that the CAPM results provide little additional value.

We next turn to the issue of risk adjustments. Ms. Ahern proposed a 0.86% increase to the DCF and CAPM cost rates to account for financial risk. She stated that financial risk is due to the introduction of senior capital, such as debt and preferred stock, into Aquarion's capital structure. She reasoned that the higher the proportion of senior capital in the capital structure, the higher the financial risk to common equity. Ms. Ahern determined this financial risk using the Hamada equation which calculates the relative equity ratios of water companies in terms of a measurable beta, or basis point.

Aquarion's debt to equity ratio is approximately 60/40. Ms. Ahern argues that this introduces a significant business risk to the Company. We do not agree. Many of the utilities we regulate have not dissimilar debt to equity ratios.³ The Commission has historically not adjusted DCF results on the basis of a utility's capital structure. In *Pennichuck Water Works*, we held that a company cannot create a risk via its capital structure and then demand that the Commission

³ See, e.g. *Northern Utilities, Inc.*, Order No. 25,352 (April 24, 2012) in Docket No. DG 11-069, reporting a debt to equity ratio of 59.75% to 40.25% and *Pennichuck East Utilities, Inc.*, Order No. 25,051 (December 11, 2009), Docket No. DW 09-051, reporting a debt to equity ratio of 55.18% to 44.82%.

protect it from that risk. *Pennichuck*, Order No. 17,911, 70 NH PUC 850, 863 (1985). In *EnergyNorth*, the Commission rejected a risk adjustment to account for the introduction of debt into the capital structure. *EnergyNorth* at 291. The Commission deems the risk associated with senior capital in a utility's capital structure to be accounted for already by investors in the market price they are willing to pay for common stock. *Pennichuck* at 863. As stated by Mr. Parcell, Ms. Ahern's reasoning assumes Aquarion is financed independently and not as part of a financial network. Exh. 14 at 22. He noted that, as Mr. Dixon testified, Aquarion is too small to seek debt on its own and that it relies on its parent. 5/23/13 Tr. at 173 lines 22-24. Mr. Parcell also noted that such an adjustment for leverage in a capital structure is inappropriate when the capital structure is complex due to parent/affiliate interrelations and is not transparent or capable of evaluation. Exh. 14 at 22. Mr. Parcell also criticized Ms. Ahern for not reviewing any capital structure data other than that provided in Aquarion's Annual Report filed with the Commission. *Id.* Additionally, she did not review trends in Aquarion's capital structure ratios. *Id.* We find these criticisms to be credible and, given the Commission's view over the years that adjustors for this type of business risk are not appropriate, we decline to adopt Ms. Ahern's financial risk adjustment.

Ms. Ahern also added a 0.40% increase to the DCF and CAPM cost rates to account for business risk. Commencing on page 44 of her testimony, she defined business risk as the risk a small company faces compared to the risk of a larger company. See, Exh. 8. She states, for example, that a smaller company faces more risk exposure to business cycles and economic conditions and that smaller companies have a less diverse customer base, less diverse operations, and less financial flexibility. Additionally, extreme weather conditions such as droughts will have a greater impact upon a small operating water utility than upon a larger, more

geographically diverse holding company. Ms. Ahern cited as an example of how size can affect business risk, Hampton's assessment of a right-of-way tax. The tax represented 28% of Aquarion's test year net income and had the Company been larger, the tax would not have had such a negative impact on Aquarion's income. Mr. Parcell rebutted these assertions by arguing that Aquarion does not have access to equity markets on its own; rather, Aquarion's equity is provided by its parent. Mr. Parcell stated that in his own analysis, the proxy of water utilities contained many utilities with multiple subsidiaries operating in different jurisdictions. Exh. 14 at 21. Ms. Ahern acknowledged in response to Hampton's discovery request 4-20 that Mr. Parcell's proxy group contained mostly utilities with subsidiaries. Mr. Parcell argued that to allow an adjustment for size could encourage utilities to split up their operations in order to form small entities in an effort to be awarded higher rates of return, which would harm customers by creating artificially higher rates. *Id.* We agree with Mr. Parcell's reasoning and thus deny Ms. Ahern's recommendation to adjust the cost of equity for business risk.

Staff's witness Mr. Naylor recommended that the cost of equity be reduced to reflect the ways in which the WICA reduces risk to the Company, though he did not quantify the level of reduction that would be appropriate. We have not required such a reduction for utilities with similar infrastructure mechanisms and do not find a basis in the record to do so in this case. As we will not increase the cost of equity to reflect the Company's assertion of greater risk, neither will we reduce the cost of equity to reflect the Staff's assertion of lesser risk. Accordingly, we find that a cost of equity of 9.6% is appropriate for Aquarion. We will incorporate this cost of equity figure into the revenue requirement calculations.

B. Revenue Requirement

The Revenue requirement is determined by multiplying rate base by a rate of return and including a utility's known and measureable expenses as found in a utility's sample test year. The Commission uses a historical test year. Aquarion selected 2011 as its test year. The audited rate base, which is agreed to by Staff, the OCA, and Aquarion, totals \$22,507,606. The Commission received no evidence or argument that this rate base is inaccurate or that the assets are not prudent, used and useful, as required by RSA 378:28. Although the rate of return was not a settled issue among Staff and the parties, for illustration purposes, the settling parties proposed using a 9.75% return on equity, Aquarion's last approved return on equity, to illustrate the impacts on the revenue requirement. Using a cost of equity of 9.75%, Staff and the settling parties calculated Aquarion's rate of return to be 7.55%. Applying this rate of return and using the settling parties' proposed operating income of \$1,699,324 and other adjustments proposed in the partial settlement agreement the revenue requirement is \$7,034,759.

Having determined the cost of equity to be 9.6%, the revenue requirement becomes \$7,012,053, resulting in an overall rate of return of 7.49%. The complete components of the revenue requirement are as follows:

| | |
|---|---------------------|
| 1) Rate Base | \$22,507,606 |
| 2) Rate of Return | <u>7.49%</u> |
| 3) Operating Income Requirement (L1 x L2) | \$ 1,685,820 |
| 4) Adjusted Net Operating Income at Present Rates | <u>\$ 1,135,450</u> |
| 5) Revenue Deficiency before Tax Effect (L3 – L4) | \$ 550,370 |
| 6) Tax Effect | <u>59.475%</u> |
| 7) Revenue Deficiency (Tax Effected) (L5 ÷ L6) | \$ 925,380 |

| | |
|--|---------------------|
| 8) Revenues at Present Rates | <u>\$ 6,086,673</u> |
| 9) Total Revenue Requirement (L7 + L8) | <u>\$ 7,012,053</u> |
| Percentage Increase (L7 ÷ L8) | 15.20% |

We are aware that, pursuant to the partial settlement agreement, Aquarion will submit documentation of its calculation for a step adjustment. The purpose of the step adjustment is to incorporate its recently approved 2012 WICA surcharge adjustment into base rates and reset the WICA surcharge to zero as of the date that the new permanent rates are implemented.

At hearing, Staff and the parties recounted the multiple rounds of discovery, technical sessions, and prefiled direct and responsive testimony. Additional time was granted to allow for exploration of settlement prior to hearing. We conclude that the process leading up to the filing of the partial settlement agreement allowed for the issues to be thoroughly explored in discovery and that negotiations were conducted with parties representing a diversity of interests. Having reviewed the partial settlement and the proposed revenue requirement and its components, as well as the proposed pro-forma adjustments, we find that the revenue requirement presented by Staff, the OCA and Aquarion is just and reasonable and that it will produce just and reasonable rates. Further, we find that the rate base used to calculate the revenue requirement is prudent, used, and useful in accordance with RSA 378:28. We also find the mechanism for transferring the WICA surcharge into base rates to be reasonable and thus approve it.

At the public hearing held on November 28, 2012, customers of Aquarion expressed concern regarding continued significant rate increases. Customers also noted that a portion of Aquarion's initial rate increase request was to account for taxes Hampton assessed on the use of rights of way. Because of the connection between changes in local taxes and rates charged to customers, we encourage Aquarion to maintain an open dialogue with the towns of Hampton,

North Hampton, and Rye on how local tax expenses impact customer rates. Aquarion has met regularly with local officials and it is apparent from the record that those meetings have been fruitful and will continue. In light of the customer comments in this proceeding, we encourage Aquarion to include in those meetings discussion of how local taxes impact customer rates.

C. Rates

The settling parties proposed that permanent rates be applied on an across the board basis, that is, each customer class sees the same percentage increase. 5/24/13 Tr. PM at 149, lines 1-4. Testifying for the settling parties, Staff stated that it believed that an across the board change in rates is consistent with the last approved rate design in that the modifications of the allocation of costs to the public fire class are reflected in the revenues that Aquarion earned in the test year. North Hampton disagreed and instead seeks an allocation of only 70% of the revenues attributable to fire protection, as done in the 2008 settlement. Missing from the record, however, is an identification of the particular revenues that should qualify for the 70% allocation.

Having considered the positions of the settling parties and North Hampton, we will approve implementation of the rate increase on an equal basis to all customer classes. Though we understand North Hampton's arguments, because the record is silent as to those revenues that are attributable to public fire protection, we have no basis to perform the 70% allocation on the revenue increase. Therefore, we will maintain the base public fire protection rates as they emerged from the 2008 settlement and allocate the new revenues on an equal basis across all customer classes. In applying the increase to Aquarion's revenue requirement equally among all customer classes, we are not modifying Order No. 25,019 or the Commission's finding that such an allocation of the prior revenue requirement was just and reasonable.

Aquarion's last cost of service study was conducted in 2005 and bears updating. A provision of the partial settlement agreement in this case appropriately includes a commitment on the part of Aquarion to file a new cost of service study as part of its next rate case. The updated information provided by that study will better inform Staff, the parties, and the Commission on a just and reasonable allocation of the revenue requirement among Aquarion's customer classes. We encourage North Hampton to participate in the review of the new cost of service study when filed.

D. WICA

Staff, the OCA, and Aquarion propose in the partial settlement that the Company's WICA pilot program be continued for further evaluation until the next general rate case. North Hampton also supports the continuation of the WICA and recommended that the program not be capped at a level that is too low for the program to achieve some of its stated objectives. For clarity's sake, in Order No. 25,019, the Commission approved caps on the revenue increases Aquarion could seek under the WICA program as follows: Aquarion could request no more than a cumulative 7.5% increase to its revenue requirement between general rate filings and it could not request an increase to its revenues of more than 5% for any twelve-month period, i.e., annually during the pilot. We believe these are the caps to which North Hampton refers.

Staff, the OCA, and Aquarion's recommendation includes relatively minor changes to the program to which North Hampton did not object. Staff and the settling parties requested the exclusion of customer meters from the list of infrastructure improvements; the exclusion from WICA recovery of the first \$50,000 in annual costs related to the emergency/reactive replacement of services, valves, and hydrants; and Aquarion's agreement to provide an updated main replacement prioritization analysis and updated infrastructure inventory in its next annual

WICA filing. At hearing, Staff stated that three years of data was insufficient to determine whether to convert the WICA pilot to a permanent program or terminate it. While pointing out that some data showed that Aquarion had accelerated its rate of replacement of aging infrastructure, other data was inconclusive on whether WICA investment had contributed to a reduction in water loss, or to a more reliable distribution system. Staff also noted that Aquarion's statement that it was likely to file another rate case in three years meant that the WICA was not meeting the goal of extending time between rate cases. For these reasons, Staff and the settling parties recommend the Commission permit the WICA program to continue, with the recommended modifications, so that additional data can be obtained and reviewed in Aquarion's next rate case.

We accept the recommendation of Staff, the OCA, and Aquarion to continue the WICA program for another rate case cycle. We are encouraged by the indication that the rate of infrastructure replacement has increased, and it can be expected that customers will benefit from this increase through a more reliable water distribution system. While this aspect of the pilot program is encouraging, it appears unlikely that the program will extend the time between rate cases as was originally projected. Aquarion indicates that changes in costs, the trend of declining consumption, and the remainder of its annual capital investments not recovered through WICA make it difficult to extend the time between full rate cases. Nevertheless, we hope that the impact of a WICA program in lessening rate shock, or spreading out the increasing costs of this water utility, will continue to provide benefits to customers.

At hearing, Hampton's witness, Frederick Welch, recommended the WICA projects be paid through bonds so that at the end of the bond period, assuming they were short-term bonds, the bond and the expenses would disappear. We understand that WICA costs cannot be paid

through short-term bonding because utility rates are not, and cannot, be set the way municipal rates are set. Utility assets placed in service are recovered over their expected useful life, on a straight line basis. The underlying principal is that customers pay a return on assets that serve them. If the Commission were to approve a shorter term, or shorter service life of the assets, current customers would pay the entire cost of assets even though those assets would be used by subsequent generations beyond that term. Thus, shortening the asset life to match the bond term would result in a subsidy whereby future customers do not pay for assets that provide them service. Straight line depreciation is an integral, essential component in preventing these types of inter-generational inequities. In addition, the use of bonds would result in higher rates for customers to pay off the assets over a shorter time period. We appreciate Mr. Welch raising this idea; however, for the reasons stated, we decline to adopt the use of bonds for these purposes.

E. Capital Planning

At hearing, the Commission instructed Aquarion to file a copy of its five-year capital budget. The plan submitted identified major capital spending areas for mains, transmission and distribution, meters, source of supply, and treatment, among other things. While this plan is useful for anticipating capital spending, the Commission is also interested in understanding Aquarion's plan for addressing peak demand. Aquarion testified that its peak demand is at or near 5 million gallons per day, usually during July. 5/23/13 Tr. at 79 and 151. At hearing, Aquarion was not fully able to state that it had a plan to reduce peak demand. The Commission directs Aquarion to file such a plan with its next Annual Report.

F. Recoupment

We approved temporary rates for Aquarion by Order No. 25,412 (September 18, 2012). Pursuant to RSA 378:29, temporary rates are effective until the final determination of the rate

proceeding. Under the law, if final rates are in excess of temporary rates, the public utility is permitted to recover the sum of the difference. In the event permanent rates are less than temporary rates, the excess is refunded, pursuant to RSA 378:7 to establish just and reasonable rates. With respect to permanent rates in this case, Staff and the settling parties recommend that the rate increase be applied equally to all customer classes. Thus, to fully reconcile the permanent rates with temporary rates, Aquarion shall file a reconciliation report that identifies the funds to be recouped for each customer class and propose a surcharge to recover the funds. We will render a decision on this issue after Aquarion has made its filing and after Staff and the parties have had an opportunity to comment on Aquarion's proposed surcharge and recoupment period.

G. Conclusion

Having reviewed the record, including the settlement and evidence presented at hearing, we find that the proposed revenue requirement, as modified by our finding on cost of equity, is reasonable and will produce just and reasonable rates. We find that the terms of the partial settlement represent an appropriate balancing of ratepayer interests and the interests of Aquarion's investors under current economic circumstances and are consistent with the public interest. We further find that Aquarion's investments in rate base used to serve its customers are prudent and used and useful, pursuant to RSA 378:28 and that the resulting rates are just and reasonable pursuant to RSA 378:7. We will adopt and approve the terms of the partial settlement agreement.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the partial settlement agreement presented by Staff and the settling parties are hereby adopted and approved as discussed herein; and it is

FURTHER ORDERED, that Aquarion is authorized a permanent revenue requirement of \$7,012,053, which is a 15.20% increase over Aquarion's pro forma test year water revenues; and it is

FURTHER ORDERED, that Aquarion is authorized to collect from customers permanent rates, as discussed herein; and it is

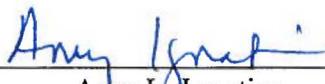
FURTHER ORDERED, that Aquarion shall file within fourteen days its calculation of the step adjustment of the approved 2012 WICA surcharge; and it is

FURTHER ORDERED, that Aquarion shall file within fourteen days its calculation of the temporary rate recoupment from July 1, 2012 to the date of this order, as well as its proposed method of recovering the difference; and it is

FURTHER ORDERED, that Aquarion shall file within thirty days a calculation of its rate case expenses and proposed surcharge; and it is

FURTHER ORDERED, that Aquarion shall file with the Commission a compliance tariff within fourteen days of the date of this order.

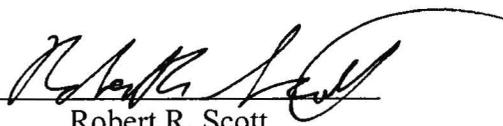
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of
June, 2013.



Amy L. Ignatius
Chairman

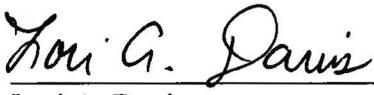


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Lori A. Davis
Assistant Secretary

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

DW 18-161

**PETITION FOR APPROVAL OF 2019 WATER INFRASTRUCTURE AND
CONSERVATION ADJUSTMENT SURCHARGE AND PROPOSED PROJECTS**

DW 18-054

**INVESTIGATION TO DETERMINE RATE EFFECTS OF FEDERAL AND STATE
CORPORATE TAX REDUCTION**

SETTLEMENT AGREEMENT

This settlement agreement (Agreement) is entered into this 15TH day of April, 2019, by and among the Staff of the New Hampshire Public Utilities Commission (Staff), Aquarion Water Company of New Hampshire, Inc. (Aquarion), and the Town of Hampton (Hampton) (collectively, the Settling Parties).

I. PROCEDURAL HISTORY

Aquarion, is a regulated public utility as defined by RSA 362:2 and RSA 362:4. Aquarion 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 a pilot Water Infrastructure and Conservation Adjustment Program (WICA) intended to accelerate the replacement of aging infrastructure and allow Aquarion to recover the fixed costs of non-revenue producing capital improvements completed and placed in service through surcharges on customers' bills following approval by the Commission. *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,019 (September 25, 2009). The WICA program was extended

and modified in Aquarion's last rate case. *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,539 (June 28, 2013) in Docket No. DW 12-085.

On October 16, 2018, Aquarion filed a petition for approval of its 2019 WICA surcharge associated with its 2018 WICA capital project (previously approved in *Aquarion Water Company of New Hampshire, Inc.*, Order No. 26,094 (December 29, 2017)), approval of its 2019 capital projects, and approval of its 2020 capital projects on a preliminary basis. The 2021 capital projects were submitted for informational purposes. Aquarion supported its petition and request for relief with the pre-filed testimony of Carl McMorran, its Operations Manager, and Debra Szabo, Director of Rates and Regulation for Aquarion Water Company of Connecticut, Inc., an affiliate of Aquarion.

The cost of the 2018 capital project, as updated during discovery, totals \$1,045,248. Aquarion requested recovery of that cost in its 2019 WICA surcharge, which covers capital projects spanning from 2013 through 2018. Aquarion requested the 2019 surcharge be effective January 1, 2019.

In Docket No. IR 18-001, the Commission opened an investigation into utility treatment of the effects of the federal corporate income tax rate reduction resulting from the 2017 Tax Cuts and Jobs Act as well as reductions in the NH Business Profits Tax (BPT) and the NH Business Enterprise Tax (BET). The Commission requested responses from utilities, including Aquarion. Aquarion's response was received and docketed as DW 18-054. In its response, Aquarion requested that the Commission allow it to credit recent tax reductions resulting from the 2017 Tax Cuts and Jobs Act against the increase in the WICA surcharge. As such, Aquarion proposed a 2019 WICA surcharge of 4.43%.

On November 9, 2018, the Commission issued an Order of Notice scheduling a prehearing conference and technical session for December 3, 2018. On November 14, 2018, the Town of Hampton petitioned to intervene. The Commission granted Hampton's intervention request at the prehearing conference. Staff and the parties agreed to a procedural schedule to govern the remainder of the proceeding and filed the proposed schedule with the Commission for approval. On January 10, 2019, the Commission approved the procedural schedule.

The Commission's Audit Staff reviewed and verified the costs associated with Aquarion's proposed 2018 WICA project and issued a report dated November 16, 2018. (Attachment A). Staff and the parties conducted discovery and held technical and settlement conferences pursuant to that schedule. Staff discovery also included an investigation and report by its consultant, Blue Ridge Consulting Services, Inc. (Blue Ridge), which reviewed the tax-change-effect calculations submitted by Aquarion in this docket. Blue Ridge issued a report, dated January 18, 2019, which contained findings and recommendations that informed Staff's position in settlement. (Attachment B). Aquarion does not agree with many statements and view-points expressed in that report, however, for purposes of completeness of the record, Aquarion will not object to the report being introduced into the record and being given the weight it deserves by the Commission.

This Agreement is the result of the discovery and meetings that occurred in this proceeding.

II. TERMS OF AGREEMENT

A. 2018 WICA Capital Project Associated with the 2019 WICA Surcharge

The Settling Parties agree and recommend that the Commission approve recovery of Aquarion's 2018 capital project up to the authorized annual revenue cap of 7.5% of Aquarion's annual retail water revenues from base rates, with a temporary adjustment for the remainder of

2019, pursuant to Section B below. This reflects an increase of .42 percent from Aquarion's previously approved 2018 WICA surcharge of 7.08% as approved in Order No. 26,094. That increase is associated with the Mill Road main replacement project. The Settling Parties agree and recommend that the Commission find that the 2018 Mill Road project is complete and that the associated plant is prudent, used and useful and in-service to customers, as detailed by Staff's engineer in its March 12, 2019, memo. (Attachment C). The Settling Parties represent that the Commission's Audit Staff has audited and verified Aquarion's costs for that project. (Attachment A).

B. 2019 and Subsequent WICA Surcharges

The Settling Parties agree and recommend that the Commission authorize Aquarion to recover its investment in the 2018 capital project pursuant to the terms of Aquarion's WICA tariff. The Settling Parties recognize that Aquarion's 2018 capital investment, if fully added to the WICA surcharge, would otherwise exceed the authorized annual revenue cap of 7.5% of Aquarion's annual retail water revenues from base rates. The Settling Parties therefore agree and recommend the Commission allow Aquarion recovery of its capital investments up to the 7.5% revenue cap, as calculated over a twelve-month period. This represents calculated annual projected revenues to be earned from the WICA surcharge of \$520,499. (Attachment D, Line 11).

The Settling Parties further agree that, for purposes of calculating the 2019 WICA surcharge, such calculation shall reflect a credit back to customers of \$44,302 based on a recalculation of Aquarion's 2018 WICA surcharge using federal and state income tax rates that were actually in effect during 2018. (Attachment E). Aquarion agrees to this credit for settlement purposes only and notes that the Commission authorized Aquarion to charge the 2018 WICA surcharge in Order No. 26,094. The Settling Parties also agree this temporarily reduces Aquarion's 2019 annual WICA surcharge to 6.86%, representing projected revenues of \$476,197 (\$520,499 - \$44,302), when calculated over a twelve-month period. (Attachment D, Line 13).

The Settling Parties further agree that during the first five months of 2019, Aquarion has and will continue to assess its customers a WICA surcharge of 7.08%, approved in Order No. 26,094, resulting in estimated revenues from the WICA of \$195,010. Therefore, the Settling Parties agree that the WICA revenue requirement for the remaining seven months of 2019 is \$281,187 (\$476,197 - \$195,010). As such, the Settling Parties further agree and recommend that, to recover this remaining amount for 2019, the Commission approve a temporarily effective WICA surcharge of 6.72% for the period from June 1, 2019 to December 31, 2019. (Attachment D, Line 15).

The Settling Parties agree that, as part of Aquarion's next rate proceeding, the Company shall provide a reconciliation between the WICA revenues it actually billed during 2019 and the WICA surcharges that would have been billed during 2019 by applying the 6.86% 12-month percentage to its full year base revenues. The Settling Parties further agree that any difference shall be a reconciling item to be considered in the determination of Aquarion's authorized revenue requirement in its next rate proceeding.

The Settling Parties further agree, that effective January 1, 2020, Aquarion's annual WICA surcharge will no longer be temporarily 6.72%, and instead shall resume to the agreed-upon 7.50% surcharge, until the resolution of Aquarion's next general rate proceeding.

The Settling Parties agree that a typical residential customer of Aquarion using 53,300 gallons of water per year currently pays \$42.53 per month under existing base rates. Based on that, the currently effective WICA of 7.08% results in a \$3.01 ($\$42.53 \times 7.08\%$) additional surcharge and a total monthly bill of \$45.54 ($\$42.53 + \3.01). The proposed temporary WICA of 6.72% will result in a \$2.86 ($\$42.53 \times 6.72\%$) additional surcharge and a total monthly bill of \$45.39 ($\$42.53 + \2.86), or a \$0.15 decrease, from June 1 through December 31, 2019. The proposed WICA of 7.50% will result in a \$3.19 ($\$42.53 \times 7.50\%$) additional surcharge and a total monthly bill of \$45.72 ($\$42.53 + \3.19), or a \$0.33 subsequent increase, commencing January 1, 2020.

The Settling Parties agree and recommend that the Commission, pursuant to the Commission's statutory authority to set "just and reasonable" rates (RSAs 374:2, 378:7, 378:28) and its prior approval of the WICA mechanism in Order Nos. 25,019 and 25,539, should find the resulting temporary WICA surcharges of 6.72% effective from June 1 through December 31, 2019, and the permanent WICA surcharge of 7.50 %, effective January 1, 2020 through the resolution of Aquarion's next general rate proceeding, are just and reasonable pursuant to RSAs 374:2 and 378:7 and approve them as such.

C. Proposed WICA Projects for 2019 and 2020

The Settling Parties agree that the WICA projects proposed for 2019, presented for the Commission's review and final approval, and the projects proposed for 2020, presented for review and preliminary approval, need not be addressed by the Commission at this time.

The Settling Parties Agree that, for efficiency purposes, examination of these projects should be deferred to Aquarion's next general rate case.

D. Deferment of Filing for 2020 WICA Surcharge

The Settling Parties agree that Aquarion will not file for recovery of further WICA eligible projects until after its next general rate case, if continuation of the WICA program is approved by the Commission.

E. The WICA Mechanism's Status as a Pilot Program

The Settling Parties agree and recommend that, as part of Aquarion's next general rate proceeding, the Commission shall determine whether the WICA program should either be continued as a permanent rate recovery mechanism or should be discontinued. To that end, Aquarion's next general rate filing shall include testimony with regard to whether the WICA program is meeting the goals upon which it was established by the Commission in Order Nos.

25,019 and 25,539 and, based on such, whether it's status as a pilot program should be terminated or should be continued as a permanent program.

F. Updated WICA Schedules and Attachments

The Settling Parties agree that the following portions of Aquarion's October 16, 2018 WICA filing have been superseded and updated and are attached hereto:

- i) Attachment F-Revised CM-1 (Project List)
- ii) Attachment G-Revised DS-2 (Tariff)

G. Audit Issue #1 – Filing of E-22 Reports (Attachment A, Page 14)

Pursuant to N.H. Code Admin. Rule Puc 609.12, Aquarion agrees to file Form E-22, *Report of Proposed Expenditures for Additions, Extensions and Capital Improvements to Fixed Capital*, on a timely basis.

H. Audit Issue #2 – Classification of Hydrant and Service Assets (Attachment A, Page 15)

The Commission Audit Staff found that Aquarion includes, as part of the cost of main replacements, the costs of associated hydrant and service replacements. The Audit Staff recommended that the costs of hydrant and service replacements should be segregated from the cost of the main replacement and recorded in their own individual asset accounts. Aquarion disagrees with the Audit Staff's recommendation, citing the additional cost associated with making these separate entries. Aquarion further argued that because hydrant and service retirements are also recorded in its mains account, this mitigates any misstatement of the mains asset. The Settling Parties agree and recommend the Commission approve deferring this issue until Aquarion's next full rate case.

I. Audit Issue # 3 – WICA Tariff Correction (Attachment A, Page 16)

The Settling Parties recognize that changes approved to Aquarion's WICA tariff in Order No. 25,539 in Docket No. DW 12-085 were not included in Aquarion's instant WICA filing. The correct proposed tariff is attached and reflects the language approved by the Commission in Order No. 25,539 on tariff page 16 that "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." (Attachment G). The Settling Parties do not believe additional Commission approval is necessary for this paragraph.

J. Proposed Resolution of DW 18-054

Consistent with Commission Order No. 26,096, dated January 3, 2018, in Docket No. IR 18-001, the Settling Parties agree and recommend the Commission order Aquarion to create a regulatory liability, as of January 1, 2018, to account for the impact of federal and state statutory

tax rate reductions which (1) gave rise to an Excess Accumulated Deferred Income Tax (EADIT) liability owed to customers and (2) enabled the realization of significant annual tax expense savings.

- (1) EADIT. The Settling Parties agree and recommend that the Commission direct Aquarion to record a regulatory liability for EADIT totaling \$1,271,245. The Settling Parties further agree to resolve any amortization and credit of the EADIT to customers in the next general rate proceeding. The valuation of the individual EADIT components and agreed upon amortization periods are contained in Attachment H. The total tax effected amortization in the first year is approximately \$50,000.
- (2) Tax Expense Savings. The Settling Parties agree and recommend that the Commission direct Aquarion to record an annual and cumulative regulatory liability for tax savings realized through the effective date of approved permanent base rates in its next general rate proceeding. The Settling Parties agree and recommend the Commission approve an annual tax savings amount of \$293,317 (Attachment I, Schedule 2, Line 41): this results 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 (*estimated and if applicable*). The amount of \$293,317 was determined, in part, based on FERC Order No. 475, which employs a formula approach using data from Aquarion's most recent rate case (DW 12-085) to approximate the cost of service impact (as if the new tax rates were in effect at the time of the last rate order). (Attachment I).

The Settling Parties further agree and recommend that the Commission approve deferring resolution of the tax expense savings component under subpart (2) until Aquarion's next rate case.

As such, the Settling Parties agree and recommend that the above-mentioned terms provide a satisfactory and full resolution of the issues contained in DW 18-054. The Settling Parties, furthermore, agree and recommend that the Commission approve the above-mentioned terms and consequently close Docket No. DW 18-054.

K. Aquarion Rate Case Filing in 2020

The Settling Parties agree and recommend the Commission order Aquarion to file a full, general rate case no later than 2020, using the prior year as a test year.

The Settling Parties also agree that Aquarion will conduct a cost of service study in this rate case, pursuant to the Partial Settlement Agreement approved in Order No. 25,539.

The Settling Parties also recognize that Hampton requested that Aquarion include the estimated cost of snow removal from Aquarion-owned fire hydrants at Aquarion's expense in the cost of service study. Aquarion disagrees that snow removal costs are appropriate costs to

include in a cost of service study. The Settling Parties agree that nothing in this Agreement prohibits Hampton from raising the issue in later proceedings, including but not limited to the Complaint already filed in DW 19-065.

L. Recovery of Staff Expert Fees in Next Rate Case

The Commission Staff incurred expenses associated with Blue Ridge's review of the impact of the corporate income tax rate reductions on Aquarion's revenues resulting from the 2017 Tax Cuts and Jobs Act as well as those instituted by the State of New Hampshire. The Settling Parties agree and recommend that Aquarion pay the consultant fees immediately upon demand, pursuant to RSA 365:37. The Settling parties further agree and recommend that the Commission order Aquarion to record these expenses as a deferred regulatory asset and thereby defer resolution of recovery of these expenses to Aquarion's next full rate case.

III. CONDITIONS

This Agreement shall not be deemed in any respect to constitute an admission by any Settling Party that any allegation or contention in these proceedings is true or valid. This Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept this Agreement in its entirety, without change or condition, the Agreement shall, at a Settling Parties' option, exercised within ten days of such Commission order, be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose. The Commission's acceptance of this Agreement shall not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the provisions set forth herein in their totality are consistent with the public interest under the circumstances. The Settling Parties agree that all pre-filed testimony should be admitted as full exhibits for the purpose of consideration of this Agreement. Consent to admit all pre-filed testimony without challenge, however, does not constitute agreement by any Settling Party that the content of the pre-filed testimony filed by another party

is accurate or what weight, if any, should be given to the views of any witness. In addition, the identification of the resolution of any specific issue in this Agreement does not indicate the Settling Parties' agreement to such resolution in any future proceeding.

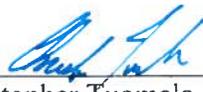
The Commission's approval of the recommendations in this Agreement shall not constitute a determination or precedent with regard to any specific adjustments, but rather shall constitute only a determination that the rates resulting from this Agreement are consistent with the public interest for purposes of this proceeding.

The discussions that produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise. Specifically, this Agreement is without prejudice to the Town of Hampton's positions expressed at the Prehearing Conference held on December 3, 2018 in this matter, or the Town's ability to raise said positions in later proceedings, including but not limited to the Complaint already filed in DW 19-065.

IN WITNESS WHEREOF, the Settling Parties have caused the Agreement to be duly signed in their respective names by their fully authorized agents.

Staff of the N.H. Public Utilities Commission

Date: April 15, 2019

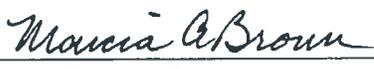
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**Aquarion Water Company of
New Hampshire, Inc.**

By its Attorney,

NH BROWN LAW, PLLC

Date: April 15, 2019

By: 
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Town of Hampton

Date: April 15, 2019

By: 
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OFFICE OF CONSUMER ADVOCATE

21 S. Fruit St., Suite 18
Concord, NH 03301-2441

April 15, 2019

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

Re: Docket Nos. DW 18-161 and DW 18-054
Aquarion Water Company of New Hampshire
Petition for Approval of 2019 WICA Surcharge and Projects
Investigation into Rate Effects of Federal and State Tax Reform

Dear Ms. Howland:

The Office of the Consumer Advocate (OCA), a party to the above referenced Docket No. DW 18-054, is in receipt of the Settlement Agreement filed today in both DW 18-054 and DW 18-161 that has been entered into by the Staff of the Commission, Aquarion Water Company of New Hampshire, and the Town of Hampton.

Please be advised that the OCA concurs with this settlement agreement and the terms contained therein. We therefore request that you treat the OCA as a signatory to the agreement for all purposes relevant to the Commission's consideration of the settlement.

I apologize to the other parties to these dockets for our delay in assenting to the settlement terms, with which we were provided prior to their submission. Please feel free to contact me if there are any questions about the foregoing.

Sincerely,

D. Maurice Kreis
Consumer Advocate

cc: Service lists, via e-mail

**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

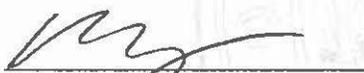
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, which states the reason and basis for a hearing, no later than May 17, 2019, for the Commission's consideration; and it is

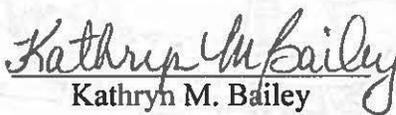
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 24, 2019; and it is

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).

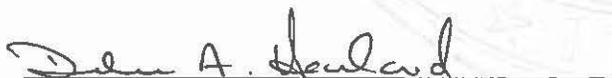
By order of the Public Utilities Commission of New Hampshire this second day of May, 2019.


Martin P. Honigberg
Chairman


Kathryn M. Bailey
Commissioner


Michael S. Giaimo
Commissioner

Attested by:


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