

CHAIRWOMAN
Dianne Martin

COMMISSIONER
Kathryn M. Bailey

EXECUTIVE DIRECTOR
Debra A. Howland

STATE OF NEW HAMPSHIRE



TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

Website:
www.puc.nh.gov

PUBLIC UTILITIES COMMISSION

21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

March 31, 2021

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

Re: Docket No. DW 20-117 – Hampstead Area Water Company, Inc.
Request for Change in Rates
Commission Staff’s Position on Pending Requests for Intervention and Request for
Commission Determination

Dear Executive Director Howland:

Commission Staff (Staff) respectfully submits the following request for the Commission to issue a determination regarding the five pending requests for intervention in the above-mentioned matter. Staff also requests that this determination be issued before April 22, 2021 as Staff has also separately requested the scheduling of a technical session for that day. Staff, furthermore, respectfully submits its positions on the requests for intervention for Commission consideration.

I. Procedural History

Hampstead Area Water Company, Inc. (HAWC or the Company) filed its request for change in rates and supporting documentation on November 24, 2020.¹ In response to the Company’s submission of the accompanying proposed tariffs, the Commission issued Order No. 26,437 on December 18, 2020. That Order suspended the tariffs and scheduled a Prehearing Conference for February 10, 2021. Order No. 26,437 also set February 8, 2021 as the deadline for intervention requests.

On January 7, 2021, Karen Steele, *pro se*, filed a request for intervention. The Town of Atkinson Board of Selectmen (Atkinson) filed its request for intervention on February 3.

The Company, Ms. Steele, Atkinson, the Office of the Consumer Advocate (OCA), and Staff attended the February 10 Prehearing Conference. During the proceeding, the Commission decided to “take [Ms. Steele’s and Atkinson’s request for intervention] under advisement” and issue an order. Hearing Transcript of February 10, 2021 at 11. The Commission also directed that the participants involved treat Ms. Steele and Atkinson as a party at the technical session that followed. *Id.*

¹ Staff notes that the Company requested approval to replace its November 24, 2020 filing by assented-to motion on March 11, 2021. The Commission approved by Secretarial Letter on March 18, but noted that the “replacement filing is mostly cosmetic and does not contain new or different proposed tariffs,” and, as such, declared that “the 18-month suspension period, set by Order No. 26,437, remains.” Secretarial Letter, March 18, 2021 at 2.

A technical session was held after the Prehearing Conference. During discussion regarding concerns of direct customer notice, the Company agreed to request Commission approval to send direct notice to its customers regarding the rate proceeding and extend the deadline to intervene until March 26, 2021.

HAWC followed with its motion for waiver of N.H. Admin. R., Puc 1203.02(c) and (d) (Commission rules regarding direct customer notice of a rate proceeding) and requested extension of the intervention period. The Commission granted the Company's request by Secretarial Letter, issued on March 3, 2021, which extended the intervention period until March 26.

On March 23, 2021 the Town of Danville (Danville) and the Town of Hampstead (Hampstead) filed individual requests for intervention. Sarah "Sally" Theriault, *pro se*, filed her request for intervention the following day. On March 27, Hampstead filed its amended request for intervention.

On March 31, Staff filed a request to schedule an additional technical session for April 22, which was not included on the procedural schedule approved by the Commission on March 18.

II. Positions of the Potential Intervenors and HAWC

A. Atkinson

In its request for intervention, Atkinson represented that it is a commercial and municipal fire protection customer of HAWC, and, as such, would be affected by HAWC's proposed rate increase in the above-mentioned docket. Town of Atkinson, Motion for Intervention, February 3, 2021. At the February 10, 2021 Prehearing Conference, Atkinson verified its status as a HAWC ratepayer. Hearing Transcript of February 10, 2021 at 10.

B. Karen Steele

In Ms. Steele's request for intervention, Ms. Steele represented that she is a "residential customer (as a taxpayer to the Town of Atkinson, who is a customer)" of HAWC and would be adversely affected by the proposed rate increase. Karen Steele, Motion for Intervention, January 7, 2021. At the prehearing conference, Ms. Steele verified that, while she is not a HAWC customer, she is concerned as a taxpayer of Atkinson about the proposed increase in HAWC's rates as it would affect Atkinson's budget. Hearing Transcript of February 10, 2021 at 9.

C. Danville

In its request, Danville represented that it is a commercial and municipal fire protection customer of HAWC. Town of Danville, Motion to Intervene, March 23, 2021.

D. Hampstead

In its request, Hampstead represented that it is a commercial and municipal fire protection customer of HAWC. Town of Hampstead, Motion to Intervene, March 23, 2021.

Hampstead amended its request on March 26, 2021, to include the “Officers of the Board’s Water Resources Committee” as they are “duly appointed representatives of the Board and thus represent the Town of Hampstead.” The Town of Hampstead, Amended Motion for Intervention, March 26, 2021.

E. Sarah “Sally” Theriault

In Ms. Theriault’s request for intervention, Ms. Theriault represented that she is “a residential customer of the Town of Hampstead of said utility and would be adversely affected by the rate case.” Sarah Theriault, Motion for Intervention March 24, 2021.

F. HAWC

At the Prehearing Conference, the Company did not object to Atkinson and Ms. Steele’s request for intervention. Hearing Transcript of February 10, 2021 at 7. At the time of filing, the Company has not presented a position on Danville, Hampstead, or Ms. Theriault’s request for intervention.

III. Staff Analysis

Petitions to intervene are governed by RSA 541-A:32. *See* N.H. Admin. R., Puc 203.17 (“The commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32”). That statute provides two options for granting intervention. The first is mandatory:

The presiding officer *shall* grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer’s notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

RSA 541-A:32, I (emphasis added).

The second option is discretionary: “The presiding officer *may* grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II (emphasis added).

A. Atkinson, Danville, and Hampstead

Staff contends that Atkinson, Danville, and Hampstead all meet the requirements of mandatory intervention, pursuant to RSA 541-A:32, I, as all three represent that they are ratepayers of HAWC.

As ratepayers, they will be directly affected by the outcome of this docket and the proposed increase in rates. The Commission, furthermore, has previously recognized the right for ratepayers to intervene under the mandatory intervention requirement. *See Concord Steam Corporation*, Order No. 25,947 at 6 (September 28, 2016) (granting intervention of the Concord School District, pursuant to RSA 541-A:32, I, based on its status as a customer of the Concord Steam Corporation and faced with a rate increase).

Thus, Staff recommends that the Commission grant Atkinson, Danville, and Hampstead's motion for intervention pursuant to RSA 541-A:32, I. Staff notes that HAWC did not object to Atkinson's request for intervention, but has not yet indicated a position on Danville and Hampstead's request.

As for Hampstead's amended request to include the Officers of the Board's Water Resources Committee, Staff takes no position on the inclusion of those individuals. Staff notes that Hampstead represented that those officers are persons "duly appointed representatives of the Board and thus represent the Town of Hampstead." Town of Hampstead, Petition for Intervention, March 26, 2021.

Staff contends that the designation and selection of representatives in litigation before the Commission is the sole responsibility of each individual participant granted intervention by the Commission. As such, Staff cannot take a position on that request.

In taking no position, however, Staff notes that while intervenors are free to choose their representatives, if allowed by their own processes, each participant is bound by the scope of the proceeding. *See Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,946 at 3 (September 27, 2016) (Commission finding that it was unnecessary to limit a party's intervention as "all parties are limited to the scope of the proceeding").

B. Karen Steele

Staff contends that Ms. Steele, as a taxpayer of Atkinson but not a ratepayer of HAWC, does not qualify as an intervenor per the mandatory standard, RSA 541-A:32, I, as the outcome of this docket will not directly affect the petitioner. While Ms. Steele's taxes may increase at some future date reflective of a possible increase in rates faced by Atkinson, Staff argues that the tax increase is too far removed and too uncertain in terms of magnitude from the instant matter to qualify as "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding" per RSA 541-A:32, I (b). Staff, furthermore, indicated at the Prehearing Conference, that there does not appear to be Commission precedent that grants automatic intervention on the basis of taxpayer standing alone. Hearing Transcript of February 10, 2021 at 8.

Staff, however, does support a ruling that Ms. Steele qualifies as a intervenor per RSA 541-A:32, II, the permissible standard of intervention. Staff contends that Ms. Steele's intervention would be in the interest of justice as her participation may assist in the rate investigation. Staff also agrees that Ms. Steele's participation would not impair the orderly and prompt conduct of the proceedings. In doing so, Staff notes that Ms. Steele filed a timely request for intervention, and Staff can attest to her exemplary and productive participation during technical sessions and the course of discovery. Staff further notes that the Company and Staff did not object to Ms. Steele's intervention at the Prehearing

Conference. Hearing Transcript of February 10, 2021 at 7. As such, Staff recommends that the Commission grant Ms. Steele's intervention pursuant to RSA 541-A:32, II.

Staff, however, requests the Commission to direct Atkinson and Ms. Steele to consolidate its efforts in the rate case investigation, per RSA 541-A:32, III (c). In support, Staff first notes that Atkinson does not object to this request. Hearing Transcript of February 10, 2021 at 10-11. Staff also notes that both Atkinson and Ms. Steele have efficiently combined their efforts at technical sessions and propounded discovery jointly since the prehearing conference, with no objection by the OCA, Staff, or HAWC.

Atkinson and Ms. Steele's interests, furthermore, are rooted in the potential rate impact faced by Atkinson, which could potentially flow to its taxpayers, including Ms. Steele. As such, their participation is ripe for combination. Staff further argues that the combination of their efforts would provide economy in terms of streamlined discovery requests and responses from HAWC, benefitting all involve. Staff, lastly, notes that approval of the combination requires no change in current participation or behavior of Atkinson or Ms. Steele. Thus, Staff recommends that the Commission approve the combination of their efforts, per RSA 541-A:32, III (c).

C. Sarah "Sally" Theriault

Ms. Theriault states in her request for intervention that she is "a residential customer of the Town of Hampstead of said utility and would be adversely affected by the rate case." Sarah Theriault, Motion for Intervention March 24, 2021. Per her request, it is unclear to Staff if Ms. Theriault is both a customer of HAWC and resident of Hampstead, or a resident of Hampstead but not a customer of HAWC. As such, Staff makes two separate recommendations dependent upon clarification of Ms. Theriault's status.

If Ms. Theriault is a ratepayer of HAWC, then Staff recommends that the Commission grant her request for intervention pursuant to RSA 541-A:32,I (see analysis above regarding Atkinson, Danville, and Hampstead in Section III, A above).

If Ms. Theriault is a resident of Hampstead, possibly subject to tax increases as a result of an increase in HAWC's rates, but not a direct ratepayer to HAWC, Staff recommends the Commission grant her request for intervention pursuant RSA 541-A:32, II (see analysis regarding Karen Steele in Section III, B above).

Staff further recommends that if Ms. Theriault's basis for intervention is RSA 541-A:32, II, her intervention should be combined with that of Hampstead's, if granted, per RSA 541-A:32, III (c). Similar to Atkinson and Ms. Steele, Staff argues that if it appears both Hampstead and Ms. Theriault's interests are rooted in the potential rate impact faced by Hampstead, which could potentially flow to its taxpayers, including Ms. Theriault, their efforts should be combined. Staff again contends that the combination of their efforts would provide economy in terms of streamlined discovery requests and responses, benefitting all participants.

IV. Conclusion

Staff recommends that the Commission approve the five pending motions for interventions, as discussed above. Staff further recommends that, in doing so, the Commission direct that Atkinson and Ms. Steele combine its efforts, pursuant to RSA 541-A:32, III (c).

Dependent upon Ms. Theriault's status, Staff also requests that she combine her intervention efforts with Hampstead, per RSA 541-A:32, III (c), if applicable.

Staff, lastly, respectfully requests that it issue its determination before the April 22, 2021 technical session.

Thank you for your attention in this matter. Please do not hesitate to contact me if you have any further questions.

Sincerely,

/s/ Christopher R. Tuomala

Christopher R. Tuomala, Esq.
Staff Attorney/Hearings Examiner

cc: Service List (electronically)