

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Hampstead Area Water Company

Request for Change in Rates

Docket No. DW 20-117

Response of the Office of the Consumer Advocate to
Motion for Rehearing of Order No. 26,809

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and submits this brief in support of the Motion for Rehearing (tab 181) of intervenor Karen Steele filed on May 15, 2023. In support of its position that the Commission grant rehearing of Order No. 26,809 (April 28, 2023), the OCA states as follows:

I. The Commission appears to have simply ignored Ms. Steele’s “Used and Useful” Argument

On April 28, 2023, via Order No. 26,809, the Commission approved a settlement agreement entered into by the subject utility (Hampstead Area Water Company, or “HAWC”) and the Department of Energy that called for a step adjustment to the permanent rates previously approved in an earlier phase of this proceeding. As noted by the Commission, the effect of Order No. 26,809 is to increase meter charges by up to 8.2 percent and the utility’s consumption charge by 11.9 percent. *Id.* at 1. The OCA did not participate in the hearing, which occurred on April 12, 2023. *Id.* at 4.

Ms. Steele, however, did participate (appearing *pro se*) and argued, in essence, that the Commission should disallow recovery of at least a portion of \$892,500 in costs, to be amortized over a period of 39 years, which was paid as a one-time fee to Manchester Water Works (“MWW”). As noted by Ms. Steele, this sum is in consideration of the right to purchase 250,000 gallons of water per day from MWW, as approved by the Commission in 2020 and as described at Bates page 20 of Exhibit 20. At hearing, Ms. Steele testified that the recoverability of this sum be reduced by between 25 and 47 percent given what she characterized as HAWC’s failure to use the relevant supply from MWW and rely, instead, on groundwater from Atkinson, the town of which Ms. Steele is a resident. Tr. 4/12/23 (tab 179) at 59, lines 20-24. At least as it was characterized by the Department at hearing, *see id.* at 62, lines 14-15, the basis of her argument for disallowance is that the resource financed via the sum in question is not “used and useful” in the provision of HAWC’s service to the public. *See, e.g., In re Campaign for Ratepayers Rights*, 145 N.H. 671, 676 (2001) (recognizing “used and useful” as a valid principle of utility law).

It appears that the Commission did not take Ms. Steele’s argument seriously. In Order No. 26,809, the Commission summarized her argument as one in which “the proposed rate adjustments do not appear to account for water supply that may have been made available” through the agreement with MWW. Order No. 26,809 at 7. The Commission alluded to “further testimony and clarification on the issues raised by Ms. Steele” as offered by HAWC’s witnesses, without elaboration. *Id.*

Characterizing the “discussion by the parties regarding the issues Ms. Steele raised” to be “informative,” the agency noted that it was not basing its decision on the step increase on “the efficacy of HAWC’s participation” in the water supply project enabled by the MWW agreement. *Id.* Rather, the Commission noted that its decision was “based on the testimony provided by the Company’s witnesses, and by [the Department’s] witness, in support of the need for an adjustment in general rates, as presented in the Step 1 Settlement.” *Id.*

II. The Legal Standard

RSA 541:3 provides that “any party” to a Commission proceeding or, indeed, “any person directly affected thereby,” may seek rehearing “in respect to any matter determined in the . . . proceeding, or covered or included in the order.” As a party to the docket, Ms. Steele is clearly among those who may invoke the statute – as is the OCA even though we did not participate in the underlying hearing.

The rehearing statute states that the Commission may grant rehearing upon a showing of “good reason” in the motion. *Id.* The standard is an intentionally broad one inasmuch as RSA 541:4 limits any issues in a subsequent appeal to the New Hampshire Supreme Court to those grounds presented to the agency via a RSA 541:3 rehearing request. Essentially, the purpose of RSA 541:3 is to give the Commission a fair opportunity to correct its errors prior to subjecting the agency and interested parties to the rigors of appellate proceedings.

The Administrative Procedure Act requires the Commission, when ruling in a contested case such as this one, to “include findings of fact and conclusions of law,

separately stated.” RSA 541-A:35. The propose of this requirement is to provide the Court with “an adequate basis upon which to review the agency’s decision.” *Appeal of Rye School District*, 173 N.H. 753, 765 (2020) (citation and internal brackets omitted); *see also In re Pinetree Power, Inc.*, 152 N.H. 92, 98 (2005) (applying this standard in a Commission proceeding). Whereas, in the *Pine Tree Power* appeal, there was “detailed evidence as reflected” an entire series of Commission orders, setting forth “underlying facts and testimony submitted by the parties, the positions of the parties, the positions of the parties, the PUC’s examination and analysis of the facts and evidence, and the governing statutes,” *id.*, here Order No. 26,809 states only what the Commission did not rely on – the “efficacy” of the utility’s participation in its arrangement with MWW – and offered nothing to either Ms. Steele, other parties (including the ratepayer interests represented by the OCA) or, indeed, the Court to allow them to understand why Ms. Steele’s “used and useful” argument was not adequate or persuasive. The agency’s failure to comply with the plain requirements of the Administrative Procedure Act could not be more apparent. It was, obviously, an oversight the agency can correct by granting rehearing as requested by Ms. Steele.

III. Conclusion

For the reasons stated above, the Commission should grant the request of intervenor Karen Steele for rehearing of Order No. 26,609 for the purpose of issuing findings of fact and conclusions of law related to her argument that certain costs to

be amortized via the recently approved step increase do not comport with the longstanding “used and useful” principle of utility law.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Grant the pending motion for rehearing of Order No. 26,609, and
- B. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,



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Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission’s service list for this docket.



Donald M. Kreis