

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 20-117**

**HAMPSTEAD AREA WATER COMPANY, INC.**

**Request for Change in Rates**

**Order Regarding Timeliness of Motion to Recover Lost Step Revenue**

**ORDER NO. 26,915**

**December 20, 2023**

In this order, the Commission addresses the timeliness of Hampstead Area Water Company, Inc.'s (HAWC) motion to recover lost step revenue. The Commission directs the parties to develop a procedural schedule that includes dates for a hearing on this motion.

**I. BACKGROUND AND PROCEDURAL HISTORY**

In Order No. 26,635 (June 2, 2022) (revised on June 10, 2022), the Commission approved a Permanent Rates Settlement, which provided for Step I and Step II rate adjustments. On December 19, 2022, HAWC submitted its request for the Step I rate adjustment as provided for in the Permanent Rates Settlement.

On January 25, 2023, HAWC, the New Hampshire Department of Energy (DOE), and the Town of Atkinson submitted a settlement agreement pertaining to the proposed rate adjustment for Step I (Step I Settlement). *See* Hearing Exhibit 20. Following a hearing on April 12, 2023, the Commission issued Order No. 26,809 approving the Step I Settlement on April 28, 2023.

Intervenor Karen Steele filed a motion for rehearing of Order No. 26,809 on May 15, 2023. In response to the motion, the Commission suspended Order No. 26,809 on June 14, 2023. *See* Order No. 26,846. The Commission issued Order No. 26,874 denying Ms. Steele's motion for rehearing on August 16, 2023. As a result of Order No.

26,874, the suspension on the Step I rates was lifted. *See* Procedural Order dated August 18, 2023.

On November 17, 2023, HAWC filed a motion to recover Step I revenue that was not collected during the 65-day suspension period. The New Hampshire Department of Energy (DOE) filed an objection to HAWC's motion on November 27, 2023.

## **II. POSITIONS OF THE PARTIES**

### **A. HAWC**

HAWC asserted that, as a result of the suspension, it lost approximately \$55,616.64 in revenue that it would have received had it been able to continue charging rates reflecting the Step I increase. HAWC noted that "RSA 541 is silent on the right of a utility to recover the deficiency of revenue during the time an order is suspended when a motion for rehearing is denied." Motion at 2. It argued that it would be unjust and unreasonable for the Commission to deny HAWC this revenue when the Commission had previously approved the Step I increase.

### **B. DOE**

The DOE objected to HAWC's motion on the ground that HAWC is not entitled to this revenue, because Ms. Steele filed a motion for rehearing within the 30-day deadline, thereby preventing Order No. 26,809 from becoming a final order. Citing RSA 541:3 and :6, among other authorities, the DOE asserted that HAWC's request to recover the additional amount that it would have collected under the new rates is time-barred, in that it did not file this request within 30 days of the Commission's last order or by September 17, 2023. Further, the DOE contends that there is no statutory authority permitting HAWC to recover the rate increase during the suspension period.

The DOE requested that the motion be denied. In the alternative, if the Commission determines that HAWC's motion is not time-barred and HAWC has a legal

basis to recover, the DOE argued that the Commission should deny the amount of the initial request and terms of recoupment. It requested that a procedural schedule be established so that the DOE could investigate HAWC's calculation and proposed method of recovery.

### III. COMMISSION ANALYSIS

Having reviewed the motion and objection, the Commission finds that the limitations imposed by RSA 541:3 do not apply in this circumstance. The Commission has authority under RSA 365:28 to exercise continuing jurisdiction over its decisions. *See Appeal of Office of Consumer Advocate*, 134 N.H. 651, 657 (1991); *see also Appeal of N.H. Div. of State Police*, 175 N.H. 229, 238 (2022) (contrasting limited authority of Personnel Appeals Board to modify its orders with Commission's authority pursuant to RSA 365:28). RSA 365:28 permits the Commission to modify its orders "[a]t any time after the making and entry thereof," provided we comply with due process and the modification is legally correct. *See Appeal of Office of Consumer Advocate*, 134 N.H. at 657-58.

The Commission's authority to modify its orders is not limited by the 30-day period contained in RSA 541:3. As the New Hampshire Supreme Court explained in *Meserve v. State*, 119 N.H. 149 (1979), RSA 541:3, which sets a 30-day deadline for a party to file a motion for rehearing of "any matter determined in the action or proceeding, or covered or included in the order," is a procedural statute. *Id.* at 152. RSA chapter 541's purpose is to provide uniform procedures to be followed in order to perfect an appeal. *Id.* The Court rejected the argument that the Commission was precluded from modifying its order, because its review was prompted by a motion filed by a party past the deadline contained in RSA 541:3. *See id.* at 150, 152. Therefore, the Commission rules that HAWC's motion is not time-barred.

Upon the filing of a motion for rehearing, the Commission may either rule on the motion within 30 days or “suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.” *See* RSA 365:21. The Commission chose to suspend Order No. 26,809 to preserve the status quo while deliberating the merits of Ms. Steele’s motion for rehearing. After the Commission issued Order No. 26,809 on April 28, 2023 approving the Step I Settlement, until June 14, 2023, when the Commission suspended this order, HAWC charged the Step I rates. *See* Settlement Agreement dated January 25, 2023 at 5 (providing effective date of Step I rates to coincide with Commission’s order approving the settlement agreement); *see also* RSA 541:18. Neither the Commission’s suspension order nor the August 18, 2023 procedural order, however, addressed the disposition of any Step I revenue that HAWC was unable to collect during the suspension period, in the event Ms. Steele’s motion for rehearing was denied, an issue that was also not raised by any party. The fact that HAWC filed its motion beyond the 30-day period from the date the ruling on the motion for rehearing does not prevent the Commission from modifying the order that originally suspended the Step I rates, provided due process is afforded and the modification is allowed by law.

In enacting RSA 365:28, “the Legislature has instructed the Commission that its exercise of jurisdiction over the utilities it regulates is continuous and required that it have the adjudicative capacity and demeanor to adapt to changes in fact or law, or the presentation of reasoned argument for reconsideration.” *Pub. Serv. Co. of N.H.*, Order No. 23,137 (February 4, 1999). As the arbiter between the interests of regulated public utilities and their customers, the Commission must exercise not only its broad statutory powers, but “those powers inherent within its broad grant of power.” *Appeal*

of *Verizon New Eng., Inc.*, 153 N.H. 50, 65 (2005). Accordingly, the Commission may have inherent authority to fashion appropriate remedies that are not expressly authorized by statute. *See id.* at 64-65 (ruling that Commission was not limited to remedies listed in RSA 366:5).

Before deciding the issue of whether modification of its prior orders to suspend and/or clarify is warranted in this docket, the Commission will provide an opportunity for the parties to be heard on the issue of whether HAWC is entitled to recoup the Step I revenue it was precluded from collecting during the suspension period. In addition, the Commission GRANTS the DOE's request to establish a procedural schedule so it can investigate HAWC's calculation and proposed method of recovery, which will be addressed at the same hearing. The parties' procedural schedule shall contain several dates on which they will be available for this 3-hour hearing, which will be scheduled by a separate order.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the parties shall develop and file with the Commission a procedural schedule no later than January 10, 2024.

By order of the Public Utilities Commission of New Hampshire this twentieth of December, 2023.

  
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Daniel C. Goldner  
Chairman

  
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Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 20-117

Printed: 12/20/2023

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