

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 20-184**

**AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.**

**Request for Change in Rates**

**Order Addressing Motion for Rehearing and Clarification of Order No. 26,659**

**O R D E R N O. 26,680**

**September 22, 2022**

In this order, the Commission grants rehearing, in part, and clarifies certain elements of Order No. 26,659, issued on July 29, 2022, in this docket.

**I. BACKGROUND**

Order No. 26,659 (the Order) approved a settlement agreement (Settlement) reached by and among Aquarion Water Company of New Hampshire, Inc. (Aquarion, or the Company), the New Hampshire Department of Energy (DOE), the Office of the Consumer Advocate, the Town of Hampton, and the Town of North Hampton (collectively, the Settling Parties). The Settlement proposed, *inter alia*:

- (1) A revenue requirement in support of “permanent rates based on a total revenue decrease of \$305,227 reflecting expenses and plant investments through 2019 effective for service rendered on an after the dates the Commission issues orders approving both the permanent rate and Step 1 revenue requirements . . . to be reconciled back to February 1, 2021, the effective date of temporary rates” (Settlement at 4–5);
- (2) A Step Adjustment to “reflect an increase to account for calendar year 2020 and 2021 plant-in-service and a known and measurable adjustment for wages, salaries, and benefits,” and which “shall include only allowed non-revenue producing projects closed to plant in 2020 and 2021, which are placed in service, and used and useful . . . net of a pending grant and accumulated depreciation . . . and the 2021 known and measurable wages, salaries, and benefits increase as shown in Appendix 5 [to the Settlement] (Settlement at 6);
- (3) Temporary-to-permanent rate recoupment effective with service rendered on or after February 1, 2021, and including both a permanent rate and

the proposed Step Adjustment, State utility property taxes for certain projects, and depreciation expense, but excluding local property taxes (Settlement at 4–5 and 12–13); and

- (4) Recoupment by Aquarion of rate case expenses, “to be submitted within 30 days of the Commission’s order approving this Settlement Agreement, including supporting documentation for review by the Settling Parties, subject to potential discovery, and subsequent approval by the Commission. The DOE, in concert with other Settling Parties, shall provide its recommendation for rate case expense recovery to the parties as soon as reasonably possible, and the Company shall be authorized to recover the approved rate case expenses after the implementation of the permanent rates and Step Adjustment as provided in Appendix 3 (Settlement at 12).

## **II. Motion for Rehearing and Clarification of Order No. 26,659**

Aquarion seeks rehearing of the following elements of Order No. 26,659:

- (1) the Commission’s finding, at page 11 of the Order, that “the scope of ‘2021 known and measurable wages, salaries, and benefits’ to be included in the Step Adjustment shall only relate to capital costs arising from the specific non-revenue producing projects to be recovered within the Step Adjustment. Wages, salaries, and benefits arising from operations outside of the non-revenue producing capital projects included within the Step Adjustment shall not be allowed for recovery within the Step Adjustment”; and
- (2) the Commission’s decision, at page 11 of the Order, that “the Commission is not, at this time, approving the methodology for calculating the Step Adjustment, as presented in the Settlement Agreement.”

Aquarion also seeks clarification of the following elements of the Order:

- (1) the ordering clause at page 13 of the Order directing Aquarion to “file, within 30 days of the date of this order, documentation of the difference between temporary rates pursuant to Order No. 26,488 and the permanent rates approved herein, and a proposed surcharge for recovering the difference from customers, for review by the NH Department of Energy, who shall in turn file a recommendation with the Commission”; and
- (2) the ordering clause at page 13 directing Aquarion to “file a request for recovery of rate case expenses with the Commission when such applicable rate case expenses are finalized.”

### **III. COMMISSION ANALYSIS**

The Commission may grant a motion for rehearing “if in its opinion good reason for the rehearing is stated in the motion.” RSA 541:3. A successful motion must establish good reason by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Tel. Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Pub. Serv. Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Pub. Serv. Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

The Commission may grant requests for clarification of its orders where the Commission’s intent has not been made sufficiently clear and where evidence exists in the record to support the Commission’s intent. *N.H. Gas Corp.*, Order No. 24,127 at 3 (February 14, 2003).

#### **A. Wage/Salary/Benefits Adjustment**

Step adjustments are generally limited in scope and allow recovery for larger capital investments in plant similar to those that have been reviewed in the underlying rate case that established the step adjustment provision. *See, e.g., Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 26,504 at 5 (July 30, 2021); *Lakes Region Water Co., Inc.*, Order No. 24,925 (December 30, 2008). “Step adjustments are best characterized as addressing expenditures of an extraordinary nature.” *In re White Rock Water Co., Inc.*, 87 N.H. P.U.C. 561 (2001).

In this instance, the Settlement stated that “[t]he Step Adjustment shall include only allowed non-revenue producing projects closed to plant in 2020 and 2021, which are placed in service, and used and useful . . . net of a pending grant and accumulated depreciation, as shown in Appendix 4, and the 2021 known and measurable wages, salaries, and benefits increase as shown in Appendix 5.” Here, recovery of wages, salaries, and benefits totaling \$44,442 past those related to the non-revenue producing capital projects included within the step adjustment would push the step adjustment beyond recovery for larger capital investments in plant.

Furthermore, “the rate elements that may be subject to a step adjustment must be carefully defined to reflect only those costs which management cannot control.” *Re Gas Service Inc.*, Order No. 17,782, 70 N.H. P.U.C. 676 (Aug. 1, 1985). Wages and salaries, including incremental increases to such, are within the control of management and represent an expense that is significantly less than the capital required for utility plant in service. Such costs are appropriately reconciled within base rate cases. Therefore, The Commission declines to rehear its decision to limit recovery of wages, salaries, and benefits to those which are related to the non-revenue producing capital projects included within the step adjustment.

### **B. Step Adjustment Methodology**

The Company next seeks rehearing of the Commission’s decision not to approve the step adjustment calculation methodology at this time. Specifically, the Company argues that:

the methodology was an integral provision of the Settlement Agreement. In fact, the methodology of the calculation of the Step Adjustment was a negotiated term of the Settlement Agreement and a component in the balance of consideration deemed acceptable to the settling parties. There is no evidence in the record challenging the calculation methodology of the Step Adjustment as presented in the Settlement Agreement. The Commission asked no questions regarding the calculation methodology at

hearing, and it was supported by all parties to the docket, in that all parties are signatories to the Settlement Agreement.

The Settlement language addressing the Step Adjustment clearly indicates that the proposed Step Adjustment calculation requires substantial additional information, review, and auditing by the Settling Parties that was not provided with the Settlement itself, as well as Commission approval. For example:

1. At 4.2 of the Settlement: “For implementation of the Step Adjustment, Aquarion agrees to submit its filing to commence review of the Step 1 adjustment, including project documentation. . . provided that the DOE Audit Division and the DOE Regulatory Division have completed their audit and review of the Step 1 adjustment filing;
2. Also at 4.2 of the Settlement: “The DOE, the OCA and/or the Towns may request additional information after reviewing the initial filing;” and
3. At 4.3 of the Settlement: “The Step Adjustment shall be subject to DOE audit and reconciliation based on the results of the audit, and subject to final approval by the Commission.

In addition, the Settlement did not include a proposed calculation methodology underlying the proposed Step Adjustment.

Although we approved the Settlement in Order No. 26,659, including the inclusion of a proposed Step Adjustment and the approach that the Settling Parties have agreed to with respect to the additional information and process steps required to support and present the proposed Step Adjustment, we have not—and cannot have—approved the calculation methodology that will ultimately be reviewed and finalized in the Step Adjustment proceeding, due to the subsequent review and process required in the Company’s own Settlement. Our statement in the Order simply notes that fact.

In its motion on page 5, the Company states “[t]he Commission asked no questions regarding the calculation methodology at hearing.” The hearing transcript does not support this claim and, in fact, highlights a significant issue encountered at the hearing. Despite notice scheduling the hearing more than two months in advance,

the Company elected to make only a single witness available for testimony and Commissioner questioning at hearing. During bench questioning, the Company's witness was unable to respond to many of the Commission's questions, including questions about the Step Adjustment as described in the Settlement Agreement. The issue so disrupted the Commission's inquiry that the Commission contemplated ending the hearing and rescheduling to a future date. *See* Transcript of hearing held 06/22/22 pages 26–34.

Therefore, rehearing on this point is denied.

### **C. Ordering Clauses**

The ordering clause at page 13 of the Order directed Aquarion to:

file, within 30 days of the date of this order, documentation of the difference between temporary rates pursuant to Order No. 26,488 and the permanent rates approved herein, and a proposed surcharge for recovering the difference from customers, for review by the NH Department of Energy, who shall in turn file a recommendation with the Commission.

Aquarion has noted that, pursuant to the Settlement proposal, the temporary-to-permanent rate recoupment cannot be determined until the permanent rates become effective upon approval of the proposed Step Adjustment. We agree and clarify the ordering clause as follows:

file, within 30 days of the date of ~~this~~ **the order ruling on the Step Adjustment**, documentation of the difference between temporary rates pursuant to Order No. 26,488 and the permanent rates approved herein, and a proposed surcharge for recovering the difference from customers, for review by the NH Department of Energy, who shall in turn file a recommendation with the Commission.

The ordering clause at page 13 of the Order directed Aquarion to:

file a request for recovery of rate case expenses with the Commission when such applicable rate case expenses are finalized.

Aquarion suggests that this directive conflicts with the terms agreed upon by the parties to the Settlement to the extent that the Settlement states, at page 12, that

the Company “agrees to submit its calculation of rate case expenses and proposed surcharge within 30 days of the Commission’s order approving [the Settlement].

Aquarion requests:

that the record reflect that the parties agreed to a definitive time period for the Company’s filing as within 30 days from a Commission order approving the Settlement and not when the expenses are “finalized” as this allows for ambiguity as to when rate case expenses can be filed, and allows for the possibility of filing for increased rate case expenses given the potential for a greater time period associated with the rate case expenses with an open-ended deadline.

Although we appreciate the Company’s diligent parsing of the language of the ordering clause, we disagree that the language conflicts with the terms agreed upon in the Settlement. To the extent that clarification is required, the Settlement has been approved; thus, the agreement between the Settling Parties that the Company file its rate case expenses “within 30 days” stands. The intent of the ordering clause was simply to encourage the Company to submit the applicable expenses, when finalized, within the 30-day timeframe established in the Settlement. If the Company prefers to submit its request for recovery of rate expenses on Day 30 after the Order was issued, it is certainly welcome to do so.

#### **IV. Conclusion**

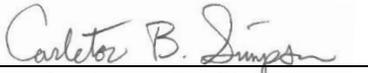
The Motion for Rehearing and Clarification of Order No. 26,659 is granted, in part, and denied, in part, as discussed above. Accordingly, the Settlement is revised, in part, and clarified, in part.

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

**ORDERED**, that Order No. 26,659 is **AMENDED** and **CLARIFIED** as set forth herein.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 2022.

  
Daniel C. Goldner  
Chairman

  
Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 20-184

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