

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 08-098**

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

**Permanent and Temporary Rate Proceeding**

**Order Approving Temporary Rates**

**ORDER NO. 24,942**

**February 13, 2009**

**APPEARANCES:** McLane, Graf, Raulerson & Middleton, P.A. by Steven V. Camerino, Esq., for Aquarion Water Company of New Hampshire; Town of Hampton by Mark S. Gearreald, Esq.; Office of the Consumer Advocate by Rorie E.P. Hollenberg on behalf of residential ratepayers; and Staff of the Public Utilities Commission by Marcia A.B. Thunberg, Esq.

**I. PROCEDURAL HISTORY**

Aquarion Water Company of New Hampshire, Inc. (Aquarion) is a regulated public utility as defined by RSA 362:2 and 362:4 and provides water service to approximately 8,770 customers in the towns of Hampton, North Hampton, and Rye. On July 29, 2008, Aquarion filed a Notice of Intent to file rate schedules and, on August 29, 2008, Aquarion filed the rate schedules as well as a petition for temporary rates. In support of the proposed rate increase, Aquarion provided pre-filed direct testimony of Larry L. Bingaman, Senior Vice President of Operations; Linda M. Discepolo, Director of Rates and Regulation; Troy M. Dixon, Manager of Regulatory Compliance; and Jay W. Shutt of Floyd Browne Group, Inc., a consulting firm that conducted a depreciation study included with Aquarion's petition.

Aquarion sought an overall increase in annual revenues of \$1,056,070, which represents a revenue increase of 21.08%. Aquarion's increase in permanent rates for all its customer classes was proposed for effect on September 26, 2008. Aquarion proposed to implement an inclining

block rate in its permanent rates in order to promote water conservation. Under this proposal, all classes of customers, except industrial and seasonal customers, would incur a higher charge for all consumption in excess of 1,500 cubic feet of consumption per quarter. While usage up to 1,500 cubic feet would be priced at 13.34% higher than Aquarion's previous rates, usage in excess of that amount would be priced at a level 26.68% higher than Aquarion's previous rates.

Aquarion also requested that the Commission approve a step adjustment for a significant plant addition currently under construction. Aquarion was in the process of replacing its Mill Road Standpipe at a cost of approximately \$1.5 million. The project was scheduled to be completed and in service by the end of 2008 and the associated step adjustment would generate an additional \$222,607 in revenues, or an additional increase of approximately 4.44%.

The combined proposed rate request and step increase would result in an overall increase in rates of 23.25% for general metered residential customers. This would result in an average annual residential water bill for a single family home of approximately \$490.51 based on an average usage of 7,500 cubic feet per month. This would be an increase of \$7.71 per month over current rates.

In addition to seeking a general rate increase, Aquarion sought to implement new charges. Specifically, it sought to implement a Water Infrastructure and Conservation Adjustment Surcharge (WICA) that would be based on capital spending and would permit Aquarion to add a surcharge to its rates, within certain limits, for eligible projects completed and in service. Aquarion asserted that the WICA surcharge would promote investment in infrastructure replacement, mitigate rate shock, and help to reduce lost and unaccounted for water. The second charge, a System Development Charge (SDC), also called a connection fee,

would offset the cost of system improvements to accommodate new customers in Aquarion's franchise area. Under this proposal, new customers taking service with a 5/8 inch meter would be charged \$779 as a one-time connection fee. The SDC for larger meter sizes would be calculated using standard American Water Works Association (AWWA) ratios of charges to meter sizes.

Aquarion also seeks to implement a Water Balance Program that would require owners of new developments connecting to the water system to either implement approved conservation measures or pay a fee that is used to fund conservation measures implemented by Aquarion.

As to its temporary rate petition, Aquarion proposed a temporary increase in revenues of \$642,600, or 12.83% on an annual basis for bills rendered on or after September 26, 2008. Aquarion requested a waiver of N.H. Admin. Rules Puc 1203.05, which requires that rate changes be implemented on a service rendered basis. The proposed temporary rate increase would add approximately \$4.26 to the average single family residential customer's monthly bill and would be reconciled with any permanent rates approved by the Commission in this proceeding. In support of its request for temporary rates, Aquarion filed financial schedules as well as the pre-filed testimony of Linda M. Discepolo.

On September 25, 2008, by Order No. 24,900 and pursuant to RSA 378:6, the Commission suspended the proposed revisions to Aquarion's permanent rate tariffs pending its investigation and scheduled a prehearing conference for November 5, 2008. On October 1, 2008, the Town of Hampton filed a petition to intervene. On October 10, 2008, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket. On October 29, 2008, the Town of North Hampton filed a petition to intervene. On November 3, 2008, Mr. Robert

Cushing filed a petition to intervene. On November 5, 2008, the Town of North Hampton Water Commission filed a petition to intervene.

On November 5, 2008, the Commission's General Counsel, F. Anne Ross, presided over the prehearing conference. At the prehearing, Staff, Aquarion, OCA, and the intervenors provided preliminary positions. Aquarion informed the Commission that it had failed to mail the order of notice directly to the town clerk of the Town of North Hampton, but it stated that it had contacted each town prior to the prehearing to inform them of the rate filing and proceeding. Staff and the parties met in a technical session after the prehearing conference and developed a proposed procedural schedule to govern the remainder of the proceeding.

On November 6, 2008, Ms. Ross submitted her hearings examiner's report and recommended that the Commission: grant the intervention requests; allow the Town of North Hampton, Town of North Hampton Water Commission, and Mr. Cushing an additional two weeks to file written preliminary statements; and direct Aquarion to file a written description of the contacts made and information shared with the three towns prior to the prehearing conference.

On November 20, 2008, Staff filed a proposed procedural schedule on behalf of the parties with the exception of the Town of Hampton. The schedule provided for a hearing on January 13, 2009 on temporary rates and a hearing in July 2009 on permanent rates. The Commission approved the schedule by secretarial letter on December 16, 2008, granted the pending petitions for intervention and directed Aquarion to submit a description of the contacts made and information shared with towns prior to the prehearing conference.

On December 26, 2008, Aquarion filed a letter describing the contacts made and information shared with the Towns of Hampton, North Hampton, and Rye. Aquarion stated that when it learned that the Town of North Hampton's notice had been misdirected to the old town hall, it called North Hampton's attorney and sent the notice by overnight mail to the town manager and town clerk. Aquarion also described the meetings it held prior to its rate filing with all three towns, the Town of North Hampton Water Commission and with representatives of the governing board of Jenness Beach in Rye.

On December 31, 2008, Aquarion filed corrected schedules to its rate filing. On January 9, 2008, the Commission issued a secretarial letter scheduling a public statement hearing on March 25, 2009 at the Winnacunnet High School auditorium in Hampton. On January 13, 2009, the Commission held a hearing on Aquarion's temporary rate request. At hearing, Aquarion revised its temporary rate increase request and, as more fully described below, reduced its initial request from a 12.83% increase to a 7.65% increase.

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

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

At hearing, Aquarion reduced its temporary rate increase request from 12.83% to a 7.65% overall increase in its revenues on a temporary basis. Hearing Transcript of January 13, 2009 (1/13/09 Tr.) at 15 lines 11-14. As to an effective date, instead of an effective date of September 26, 2008, Aquarion proposed that, as of December 15, 2008, the Commission approve current rates as temporary rates and that effective February 1, 2009, the Commission approve a 7.65% overall increase in rates as temporary rates. According to Aquarion, the 7.65% overall increase would be applied to its various customer classes but because it is not seeking an increase to many

of its miscellaneous charges, the effective increase to some customer classes would be slightly higher than 7.65%. Exh. 5 at 1 and Exh. 1 at 11. Residential metered service would increase by 7.72%, commercial metered service would increase by 7.73%, public authority rates would increase by 7.68%, its two industrial customers' rates would increase by 7.77%, seasonal customer rates would increase by 7.71%, and private and public fire protection rates would increase by 7.73%. Exh. 5 at 1. The temporary rates would be reconciled with permanent rates back to December 15, 2008, pursuant to RSA 378:29, at the conclusion of this proceeding. Aquarion proposed that temporary rates be implemented on a service-rendered basis, rather than on a bills-rendered basis as it had originally requested. Aquarion withdrew its request that the Commission waive N.H. Code Admin. Rule Puc 1203.05 requiring rates be implemented on a service rendered basis. 1/13/09 Tr. at 19 lines 14-21. Aquarion stated that the 7.65% overall increase would increase its revenues by \$383,262. 1/13/09 Tr. at 15 line 14.

In support of this request, Aquarion testified that its approved rate of return on equity is 9.5% and its return on rate base is 8.81%, but that for the twelve months ending November 30, 2008, its return on equity was 2.39% and its return on rate base was 4.6%. 1/13/09 Tr. at 12 lines 22-24 and at 13 line 1. Aquarion testified that its operating and maintenance expenses have increased 0.8% and that its wages, electrical power, and health and liability insurance expenses have also increased. 1/13/09 Tr. at 14 lines 23-24 and at 15 lines 3-5.

#### **B. Town of Hampton**

Hampton expressed concern that Aquarion's requests for rate relief were becoming more frequent than in the past. Hampton noted that the increased frequency of rate relief coincides with Macquarie Group's acquisition of Aquarion and it stated that at the time of the acquisition,

comments received from a public statement hearing included concerns that the acquisition would result in a rate increase. 1/13/09 Tr. at 49 lines 1-17.

Hampton objected to Aquarion's temporary rate request on the grounds that the request is not in the public interest. Hampton stated that Aquarion is in a state of uncertainty in light of the departure of Mr. Larry L. Bingaman, Senior Vice President of Operations for Aquarion Water Company New Hampshire. 1/13/09 Tr. at 42 lines 7-20. Hampton expressed concern that Mr. Bingaman's duties are being filled by two Aquarion Water Company Connecticut employees who have existing duties themselves and who do not have as frequent contact with New Hampshire as Mr. Bingaman had. 1/13/09 Tr. at 51 lines 10-21. Hampton proposed that the Commission approve a temporary rate increase of 4.85%, instead of the 7.65% requested. Hampton reasoned that the Commission approved this amount in 2006 as a step increase to rates and it was fully documented before the Commission. 1/13/09 Tr. at 50 lines 12-24.

**C. Office of the Consumer Advocate**

OCA expressed support for Aquarion's revised temporary rate request. OCA stated that Aquarion's revised effective date and service rendered implementation mechanism addressed OCA's concern that customers be treated equally. 1/13/09 Tr. at 52 lines 12-24.

**D. Staff**

Staff testified that it had reviewed Aquarion's permanent and temporary rate filings, Aquarion's annual reports, and Staff's audit of Aquarion's 2007 earnings, and based on that review concluded that Aquarion was under earning. 1/13/09 Tr. at 23 lines 5-12. Staff stated that the effective date of December 15, 2008 proposed by Aquarion was reasonable since all customers had been notified of the proceeding prior to that date. 1/13/09 Tr. at 23 lines 21-24.

Staff testified that the temporary rate will mitigate Aquarion's under earning status and will reduce the amount of any recoupment that occurs at the conclusion of this proceeding. 1/13/09 Tr. at 24 lines 3-12. Staff concluded stated that Aquarion's proposed temporary rate was just and reasonable and requested the Commission approve the revised temporary rate request.

### **III. COMMISSION ANALYSIS**

Pursuant to RSA 378:27, the Commission may approve temporary rates for the duration of the proceeding if, in its opinion, the public interest so requires and the reports of the public utility filed with the Commission indicate it is not earning a reasonable return on its property used and useful in the public service. The standard for approval of temporary rates is less stringent than that for permanent rates. *Appeal of the Office of the Consumer Advocate*, 134 N.H. 651, 660 (1991), *citing New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518 (1949).

We have reviewed the evidence presented regarding temporary rates and we find it reasonable to approve a 7.65% overall increase in Aquarion's revenue requirement, on a temporary basis. Aquarion has demonstrated that, based on its reports on file with the Commission, it is under earning. Specifically, for the twelve months ending November 30, 2008, Aquarion's rate of return was 4.6%, well below its authorized rate of return of 8.81%. We find that this under earning may ultimately disadvantage both Aquarion and its ratepayers. According to schedules provided at hearing, the proposed 7.65% temporary rate would produce a rate of return, pro formed as of March 31, 2008, of 7.85%. Exh. 5 at 3. Although this rate of return is below Aquarion's last authorized rate of return, we find that the proposed increase in temporary rates is in the public interest and will yield a reasonable return on Aquarion's plant for the duration of this proceeding.



We reject the Town of Hampton's recommendation that we approve a 4.85% temporary rate increase since, as Ms. Discepolo testified at hearing, Aquarion's earnings since March 31, 2008 have deteriorated even further. Approving a 4.85% temporary rate increase would only compound Aquarion's under earning.

In approving a temporary rate increase, we note that the proposed temporary rate increase is a fraction of the 21.08% overall permanent rate increase Aquarion seeks. If the permanent rates finally determined in this proceeding are higher than the temporary rates, the temporary increase will mitigate potential rate shock to customers in the future and will reduce the significance of any recoupment between temporary rates and permanent rates. If permanent rates are lower than temporary rates, then Aquarion and its customers are protected because, pursuant to RSA 378:29, the temporary and final revenue requirements and rates will be fully reconcilable upon final disposition of the issues involved in this proceeding. This reconciliation provision protects both Aquarion and its customers in that Aquarion will only recover the revenue requirement as finally determined and customers will pay net rates no higher than those authorized.

Aquarion proposes that its current rates be approved as temporary rates for the period December 15, 2008 to January 31, 2009 and that from February 1, 2009 through the approval of permanent rates, temporary rates be increased by 7.65%. We note that RSA 378:27 allows the Commission to authorize effective dates as early as the date on which the petition for a permanent rate change is filed. *See, Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980). In this case, Aquarion filed its notice of intent to file rate schedules on July 29, 2008 and published Order No. 24,900 in the Hampton Union on September 30, 2008, and in the

Portsmouth Herald on October 3, 2008. The publication notified the public of Aquarion's rate case filing, proposed tariffs, date of the Commission's prehearing conference, and of the ability to intervene in this proceeding. In light of this notice, we find that setting current rates as temporary rates for service on or after December 15, 2008, and increasing temporary rates by 7.65% for service on or after February 1, 2009, is just and reasonable and consistent with our statutory authority.

Having reviewed the record in this proceeding, including the settlement agreement and the supporting testimony presented at the January 13, 2009 hearing, we find the proposed temporary rates and effective dates to be reasonable and for the public good. We find that Aquarion has demonstrated an earnings deficiency and that it is in the public interest to authorize, on a temporary basis, an increase in Aquarion's revenue requirement sufficient for it to earn a reasonable rate of return during our investigation in this proceeding. We note that the actual increase, effective February 1, 2009, varies among customer classes and that some metered customers will experience slightly higher increases, ranging from 7.68% to 7.77%, than other customers. Exh. 5 at 1. This minor variation is due to Aquarion not increasing certain miscellaneous charges and thus those revenues are collected from the other classes. We find the minor variations to be reasonable and we find that the resulting temporary rates are just and reasonable for customers. Furthermore, the temporary rates represent an appropriate balancing of ratepayer interests and the interests of Aquarion's investors. Accordingly, we approve the proposed temporary rates and effective dates as described herein.

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

**ORDERED**, that Aquarion Water Company of New Hampshire, Inc.'s request for temporary rates at the level of its currently authorized rates for service rendered December 15, 2008 through January 31, 2009 is GRANTED; and it is

**FURTHER ORDERED**, that Aquarion Water Company of New Hampshire, Inc.'s request for an increase in temporary rates by 7.65% overall for service rendered on or after February 1, 2009 is GRANTED; and it is

**FURTHER ORDERED**, that Aquarion Water Company of New Hampshire, Inc. shall submit tariff pages in compliance with this order within 15 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 2009.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary