

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 12-085

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

Notice of Intent to File Rate Schedules

**Order Authorizing Recovery of Rate Case Expenses, Temporary Rate Recoupment
and Granting Motions for Protective Treatment**

ORDER NO. 25,586

October 22, 2013

I. BACKGROUND

On September 18, 2012, by Order No. 25,412, the Commission approved an 8.80% temporary rate increase for Aquarion Water Company of New Hampshire, Inc. (Aquarion) effective for service rendered on or after July 1, 2012. On June 28, 2013, by Order No. 25,539, the Commission approved a permanent rate increase of 15.20% over Aquarion's test year revenue requirement. The Commission also ordered that Aquarion file within fourteen days its calculation of the temporary rate recoupment from July 1, 2012 to the date of the Commission's order, as well as its proposed method of recovering the difference. Further, the Commission ordered that within thirty days, Aquarion file its calculation of rate case expenses and proposed surcharge.

On July 12, 2013, Aquarion filed its proposal to recover \$595,244 in revenue representing the difference between temporary and permanent rates. On July 26, 2013, Aquarion filed its proposal to recover \$326,357 in rate case expenses. On July 12, 2013, Aquarion filed a motion for confidential treatment for certain hourly billing rate information in connection with

its rate case expense surcharge calculation; specifically, Aquarion seeks confidential treatment of invoices from its attorneys, McLane, Graf, Raulerson and Middleton, P.A. (McLane Law Firm) “that contain confidential and competitively sensitive hourly billing rate information.” Later, on August 21, 2013, Aquarion filed a motion for confidential treatment of certain hourly billing rate information provided in its response to data request Staff 5-1 which Staff had issued in its review of the rate case expenses. Specifically, Aquarion seeks confidential treatment of invoices from AUS Consultants, Inc. (AUS) provided as part of its rate case expense and proposed surcharge filing dated July 26, 2013. Aquarion argues that the invoices contain confidential and competitively sensitive hourly billing rate information for AUS personnel disclosure of which would likely cause competitive harm to AUS.

On August 22, 2013, Aquarion notified the Commission that it intended to modify its initial rate case expense proposal. Rather than recovering \$326,357 in rate case expenses, Aquarion reduced that amount by \$100,680 to \$225,677. Aquarion explained that its decision to reduce the amount of its rate case expenses was in response to discussions with the Towns of Hampton and North Hampton and was offered “in the spirit of good will and compromise and should not be deemed a concession that any portion of the Company’s expenses were not prudently incurred.”

On September 10, 2013, Staff filed its recommendations concerning Aquarion’s proposals. Staff stated that it had thoroughly reviewed the information submitted by Aquarion and had conducted discovery upon the filings.

With respect to recovery of the differential between temporary and permanent rates, Staff stated that in its review, it became aware of a calculation error pertaining to the Private Fire

customer class which resulted in a revised overall recoupment amount of \$587,324; a reduction of \$7,920. Staff stated that Aquarion submitted a revised schedule indicating the resulting corrected recoupment surcharge rates to the Private Fire customer class. Staff stated that, after review, Staff agreed with the revised overall recoupment amount as well as the resulting calculated rates. Staff attached as Attachment B to its letter, Aquarion's corrected illustration of its recommended recoupment amounts, by each of its 32 customer classes. Customers are billed either on a monthly basis, quarterly basis, or annual basis, depending upon the customer class. Staff stated that Aquarion's recoupment and rate case expense surcharges would impact its largest customer classes as follows: residential customers with a 5/8 inch meter would pay \$5.45 per month for 12 months; commercial customers with a 5/8 inch meter would pay \$7.07 per month for 12 months; seasonal residential customers with a 5/8 inch meter would pay a one-time surcharge of \$74.71; private fire protection customers with a 3 inch service would pay \$14.17 per quarter for four quarters; and public fire protection customers would pay \$47.62 per quarter for four quarters.

With regard to rate case expenses, Staff recommended acceptance of the revised amount proposed by Aquarion of \$225,677. In order to collect this amount, Staff recommended Aquarion be allowed to assess a surcharge to its 9,173 customers over a 12 month period in the amount of \$2.05 per customer per month for all customer classes.

Staff stated that it notified Aquarion, the Office of the Consumer Advocate (OCA), and the Towns of Hampton and North Hampton of its recommendations. Aquarion, the OCA and the Town of Hampton concurred with Staff's recommendation. The Town of North Hampton provided no response.

II. COMMISSION ANALYSIS

We will first address Aquarion's motions for protective treatment concerning the billing rates of its outside attorneys, McLane Law Firm, and its consultant, AUS. Aquarion states that the information for which it is seeking confidential treatment must be protected from public disclosure because disclosure of the information may detrimentally impact the McLane Law Firm's and AUS's competitive position in negotiating with other parties. Aquarion states that the information it seeks to exempt from public disclosure qualifies as "confidential, commercial, or financial information," and that such request is consistent with both the New Hampshire Right-to-Know law, RSA 91-A:5, IV and prior Commission orders.

The New Hampshire Right-to-Know law provides each citizen the right to inspect public records in the possession of the Commission. *See*, RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial, or financial information." RSA 91-A:5, IV. In *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009), the Commission enunciated the following test: In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

With regard to attorney billing rates, the Commission has previously found hourly billing rate information exempt from disclosure. *Unitil Energy Systems, Inc.*, Order No. 24,746, 92 NH

PUC 109, 114 (2007). In the instant case, we do not find the public's interest in reviewing this financial, commercially sensitive information sufficient to outweigh the benefit derived from maintaining the confidentiality of such information. There is no indication that disclosure of the information would inform the public about the workings of the Commission. In lieu of disclosure, Aquarion has provided total invoice amounts for the McLane Law Firm and AUS during certain billing periods and we deem this information sufficient to inform the public of its expenses. Disclosure of the McLane Law Firm and AUS's hourly billing rate information could cause harm as release of the information would likely result in a competitive disadvantage to these consultants. In balancing the interests of Aquarion and its consultants' interests in protecting the information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interests in disclosure. We will, therefore, grant protective treatment of the information regarding billing rates and allow disclosure of the invoice totals.

Consistent with past practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

We next address the issue of recoupment of the difference between temporary and permanent rates. RSA 378:29 requires the Commission to allow utilities to amortize and recover the difference between temporary rates and permanent rates over the effective period of the temporary rates if, upon the final disposition of the rate proceeding, the rates ultimately approved exceed the earlier imposed temporary rates, which is the case here. The revenue shortfall, when

compared with the temporary rates actually charged since the July 1, 2012 effective date, totals \$587,324. We have reviewed Aquarion's temporary rate recoupment proposal and Staff's recommendation wherein Aquarion modified its original proposal as to the Private Fire customer class and we concur with the recommendation. We, therefore, approve recovery of the proposed revenue differential between temporary and permanent rates in the amount of \$587,324.

The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of business appropriate for recovery through rates. *Lakes Region Water Company, Inc.*, Order No. 24,708, 91 N.H. PUC 586, 587 (2006). Consistent with that policy, we have reviewed Aquarion's rate case expenses as well as Staff's recommendation. In its recommendation, Staff identified \$1,842 in audit-related expenses and \$408 in meal-related expenses that are not normally approved as rate case expenses. Nonetheless, Staff observed that due to Aquarion's reduction of its rate case expense request to \$225,677, Staff's proposed disallowances became moot. Staff concurred with the remainder of the expenses and no other party objected to any other expenses. As a result, we find the requested \$225,677 in rate case expenses to be reasonable and we will approve Aquarion's recovery of that amount.

Lastly, we address the proposed surcharge to recover the temporary rate recoupment and rate case expenses. Both Aquarion's revenue recoupment filing and rate case expense filing proposed a surcharge to customer bills to be collected over the course of 12 monthly billings, 4 quarterly billings, or 1 annual billing, depending on the customer class. . We have reviewed Aquarion's recovery requests and Staff's recommendations and we find the proposal to spread the combined surcharge over 12 monthly billing periods, 4 quarterly billing periods, and 1 annual billing period to be just and reasonable. We find that such recovery will not be unduly

burdensome to customers. Accordingly, we authorize Aquarion to recover the temporary rate recoupment, by customer class, as depicted in Attachment B to Staff's recommendation letter.

We also authorize Aquarion to impose a surcharge to recover rate case expenses in the amount of \$2.05 per customer per month over twelve months.

Based upon the foregoing, it is hereby

ORDERED, that Aquarion Water Company of New Hampshire, Inc. is authorized to recover \$587,324, representing the difference between its temporary rates approved in Order No. 25,412 and the permanent rates approved in Order No. 25,539; and it is

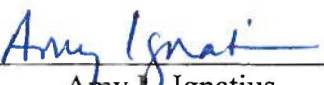
FURTHER ORDERED, that Aquarion Water Company of New Hampshire, Inc. is authorized to recover \$225,677, representing its prudently incurred rate case expenses; and it is

FURTHER ORDERED, that Aquarion Water Company of New Hampshire, Inc. is authorized to surcharge its customers for recoupment of temporary and permanent rates as delineated in Attachment B to Staff's recommendation, until the full amount of the temporary and permanent rate recoupment; and it is

FURTHER ORDERED, that Aquarion Water Company of New Hampshire, Inc. is authorized to collect a surcharge in the amount of \$2.05 per customer per month for twelve months to recover its rate case expenses; and it is

FURTHER ORDERED, that Aquarion Water Company of New Hampshire, Inc. shall file a compliance tariff within fourteen calendar days of the date of this order reflecting its new permanent rates, temporary and permanent rate recoupment, and rate case expense surcharge.

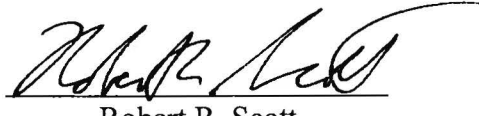
By Order of the Public Utilities Commission of New Hampshire this twenty-second day
of October, 2013.



Amy L. Ignatius
Chairman



Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director