

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 19-065**

**TOWN OF HAMPTON**

**Complaint by Town of Hampton Against Aquarion Water Company**

**Order Dismissing Complaint**

**ORDER NO. 26,263**

**June 24, 2019**

This order dismisses the Town of Hampton's complaint against Aquarion Water Company as there is no basis for the complainant's dispute and no need for an independent investigation.

**I. PROCEDURAL HISTORY**

The Town of Hampton (Hampton or the Town) filed a complaint against Aquarion Water Company of New Hampshire, Inc. (Aquarion or the Company), on March 27, 2019. The Commission forwarded the complaint to Aquarion on April 2, and the Company filed a response on April 16. The Office of the Consumer Advocate (OCA) filed a letter of participation on April 8. Both Hampton and the OCA responded to Aquarion's April 16 filing, and Aquarion, in turn, filed its own response to those submissions on May 21. The Town of North Hampton (North Hampton) petitioned to intervene and joined with Hampton in its complaint on May 28. The Company answered on June 7.

The complaint and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2019/19-065.html>.

## II. POSITIONS

### A. Hampton

Hampton's initial filing lodged two complaints: (1) that Aquarion was overearning; and (2) that the Company failed to clear snow from the Town's fire hydrants. Hampton argued that Aquarion had been earning a greater return on equity (ROE) than the Commission approved in the Company's most recent rate case, costing Aquarion customers a significant amount of money. Hampton contended that Aquarion should return excess earnings from the past five years to Aquarion's customers, with interest, attorney's fees, and costs.

The Town further argued that responsibility for clearing snow from fire hydrants rests with Aquarion, not with the Town's firefighters who have been doing that work. The Town, citing *Clapp v. Jaffrey*, 97 N.H. 456 (1952), contended that use of town funds to clear the hydrants is illegal, as tax monies cannot be used for the advantage of private individuals. Hampton requested that the Commission order Aquarion to clear the hydrants and include the cost of snow removal in the cost of service study for the Company's next rate case.

After Aquarion answered the complaint, Hampton notified the Commission it was dissatisfied with Aquarion's response and repeated its arguments. In its May 17 filing, the Town also argued that the Company could be violating a Commission order even if it was complying with its tariff. According to the Town, Aquarion violated the Commission's order when its earnings exceeded the rate of return authorized by the Order and customers should be entitled to reparation under RSA 365:29. Hampton added that it was not seeking an adjustment in rates for the overearning, merely a rebate and compliance with Order No. 25,539, which set the allowable ROE.

**B. OCA**

The OCA argued that Hampton's complaint was devoid of merit and should be dismissed. Earning an ROE in excess of the one allowed in a utility's most recent rate case is not an actionable event. The OCA contended that approved rates have the force and effect of law, and that the ROE is only an input in the Commission's determination of those rates. The OCA also argued that because Aquarion's tariff does not provide for the clearing of fire hydrants, Hampton's complaint should be dismissed as the Company is not violating any law. The OCA, however, argued that the Commission should exercise its authority under RSA 378:7 and commence a rate proceeding immediately. The OCA contended that immediate commencement would not violate Order No. 26,245, which required Aquarion to file a rate case "no later than 2020." *See Aquarion Water Company of New Hampshire, Inc.*, Order No. 26,245 at 15 (May 2, 2019).

**C. North Hampton**

North Hampton joined with Hampton, mirroring the Town's complaint concerning its own residents, and requested the same relief. North Hampton also petitioned to intervene.

**D. Aquarion**

Aquarion argued that the complaint must be rejected because the Company has not acted illegally and the complaint does not meet the standard of RSA 365:1. The Company further argued that Aquarion's overearning did not violate, nor was the Company alleged to have violated, the rates set forth in its tariff established by the Commission. Aquarion contended that the relief sought by Hampton for overearning would require the Commission to engage in single-issue ratemaking and the establishment of retroactive rates, both of which are rejected

routinely by the Commission. Instead, the proper course to address unjust or unreasonable rates is through a rate case, which Aquarion committed to file.

Aquarion argued that the complaint regarding snow removal from fire hydrants must also be rejected. The Company contended that the cost of snow shoveling is not included in its rates and that it is not required by law to provide the service of cleaning the fire hydrants. Aquarion agreed with the OCA's position that the complaint should be dismissed, but argued against the OCA's request to have the Commission commence a general rate proceeding immediately. The Company contended that an immediate rate case is inconsistent with the settlement agreement approved in Order No. 26,245, which anticipated a full rate proceeding in 2020.

Concerning North Hampton's filing, Aquarion argued that a petition to intervene is inappropriate as an adjudicative proceeding had not been commenced, and thus should not be ruled upon. The Company also contended that North Hampton's petition seeks to undo the settlement agreement approved by Order No. 26,245, which set the deadline for comments or request for hearing on May 17, 2019, making North Hampton's request untimely. Aquarion further argued that North Hampton's complaint mirrors the Town's filing, and should be dispensed with in a similar manner.

### **III. COMMISSION ANALYSIS**

Pursuant to RSA 365:1, "[a]ny person may make complaint to the commission by petition setting forth in writing any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of law, or of the terms and conditions of its franchises or charter, or of an order of the commission." If the utility, after the complaint is forwarded and given time to respond pursuant to RSA 365:2, makes reparation for any injury alleged and ceases to commit or permit the violation of the law, franchise, or order charged in the

complaint, and timely notifies the Commission, no further action is required by the Commission. RSA 365:3. If the charges are not satisfied, the Commission shall investigate the matter, after notice and hearing, if reasonable grounds exist. RSA 365:4.

We find that there is no basis for Hampton's complaint. Even when the complaint is viewed in the light most favorable to Hampton, the Town has not demonstrated a violation of law, the terms and conditions of Aquarion's franchise or charter, or a Commission order. *See* RSA 365:1. Although the Commission approved an ROE in Aquarion's last rate case, that ROE was only an input into the Commission's calculation of the rates the Commission set for the Company. Examining the individual issue of ROE outside the context of setting appropriate rates leads to single-issue ratemaking, which the Commission "does not favor." *PNE Energy Supply, LLC D/B/A Power New England*, Order No. 25,603 at 14 (December 13, 2013). The record is devoid of evidence, furthermore, that Aquarion violated its tariff or charged illegal rates.

The Commission has stated that in the context of underearning, "an authorized rate of return ... is not a guarantee of those earnings," and has prohibited utilities from setting higher temporary rates on that basis. *Hampstead Area Water Company, Inc.*, Order No. 20,311 at 3 (November 22, 1991). The preferred mechanism to address the issue of overearning or underearning by a utility is a full rate proceeding, which we note is set for 2020, pursuant to Order No. 26,245. With regard to the fire hydrants, the Company has not violated any provision of its tariff nor committed any wrongdoing by failing to clear them of snow.


Accordingly, we find that reasonable grounds do not exist to warrant a further investigation pursuant to RSA 365:4 and dismiss the complaint. As an investigation is not warranted at this time, neither the OCA's request for a full rate case nor North Hampton's


joinder in Hampton's complaint and motion for intervention need to be addressed as they are moot.

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

**ORDERED**, that the complaint filed by Hampton is DISMISSED.

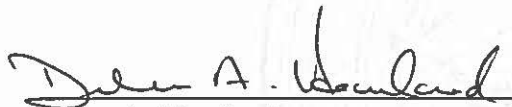
By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 2019.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director



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