

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 10-090

**Pittsfield Aqueduct Company, Inc.
Distribution Rate Case**

**NEW HAMPSHIRE OFFICE OF THE CONSUMER ADVOCATE'S
RESPONSE TO THE COMPANY'S RATE CASE EXPENSE REQUEST**

NOW COMES the New Hampshire Office of the Consumer Advocate ("OCA") and respectfully requests that the New Hampshire Public Utilities Commission ("Commission") deny the rate case expense request as submitted by Pittsfield Aqueduct Company, Inc. ("Company") to the Commission's Staff ("Staff") on June 20, 2011, and instead authorize the recovery of no more than \$15,759.41, without interest. In support of its request for relief, the OCA states the following facts and law:

1. The Commission may only authorize the utility to recover costs associated with this proceeding that are just, reasonable and in the public interest. RSA 365:38-a. The Commission "evaluate[s] requests for recovery of rate case expenses from customers according to the same 'just and reasonable' standard that applies to all rates charged by public utilities pursuant to RSA 378:7." *Re Kearsarge Telephone Company*, 89 NH PUC 541 (2004). Although viewed as a "proper operating expense," *Re Lakes Region Water Company, Inc.*, 75 NH PUC 89, 92 (citation omitted), a utility's rate case expenses, "[i]f unreasonably incurred, if undue in amount ... may to that extent be reduced." *State v. Hampton Water Works*, 91 NH 278, 296 (1941).
2. The amount proposed by the Company for recovery, \$44,997.18, is not just, reasonable or in the public interest. For the following reasons, the Commission should reduce the

"excessive and improper," *Id.*, amount that the Company requested recovery from ratepayers by at least \$29,237.77:

- a. Just months before filing this rate case, the Company had concluded its prior rate case, receiving authorization for a significant rate increase as well as authorization to recover more than \$100,000 in rate case expenses;
 - b. The Company did not competitively bid any of its contracts for outside consultants and has no policy related to the procurement of consultant services;
 - c. The Company may have no written agreement with its outside legal counsel for services which account for more than half of the total rate case expenses;
 - d. The Company's rate case expense request includes costs related to excessive mileage; and
 - e. The Company's rate case expense request may include costs related to certain inappropriate expenses.
3. In addition, for the following reasons, the Commission, as a penalty, should not allow the Company to recover interest on the remaining rate case expenses of amount of no more than \$15,759.41:
- a. The Company failed to abide by the Commission's rules for filings in adjudicative proceedings when it submitted its rate case expense request to Commission Staff; and
 - b. The Company failed to abide by the Commission's rule requiring the filing of a motion for confidential treatment as well as the Commission's interim rules related to the filing of confidential and redacted documents.

DW 08-052 Company's Prior Rate Case

4. In December 2009, in the Company's last rate case, the Commission approved a rate increase for general service customers in Pittsfield of 57.89%. *In re Pittsfield Aqueduct Company, Inc.*, Order 25,051 (DW 08-052, December 11, 2009), pp. 6, and 13-14. The Commission's Order approved a settlement agreement between the Company and Staff, and the Commission ruled that the rates proposed by the Company and Staff "are just and reasonable." *Id.* at p. 15.
5. On February 24, 2010, in the Company's last rate case, the Commission authorized the Company to recover \$105,779.72 in rate case expenses.¹ Less than two months later, on April 6, 2011, the Company filed its notice of intent to further increase its new "just and reasonable" rates, of which the Company (along with Staff) had advocated for Commission approval.. The Company's filing of the 2010 rate case, as well as its efforts to recover expenses associated with the new rate case so soon after its last rate case concluded – particularly in light of the manner in which it concluded, with the Company's consent – is not just, reasonable or in the public interest.
6. For example, the Company paid its consultant for cost of service/rate design issues \$15,418 for work on the 2010 rate case. In the 2008 rate case, however, the Company paid the same consultant \$22,810 for the same type of services. The Company claims that it retained its consultants based on "their expertise and familiarity with details relative to the Company's operations." *See* Company's Response to OCA 1-19 (Attachment A). To the extent that there existed any "expertise and familiarity,"

¹ The rate case expenses in the 2008 rate case also related to customers in the Company's "North Country" systems: Sunrise Lake Estates, Birch Hill, and Locke Lake, which were transferred to an affiliate of the Company as a result of a related docket, DW 09-051, and were not customers of PAC during the 2010 rate case.

however, this consultant's charges for the 2010 rate case do not reflect any significant economies for having worked on the Company's 2008 rate case.

7. The filing a new rate case so soon after agreeing to new, higher rates in its last rate case, and the spending of more than \$144,000 to litigate both rate cases was not just, reasonable or in the public interest. Allowing the Company to spend as much money as it wants to win a rate case, while requiring ratepayers to pay those costs, amounts to a blank check for the Company.
8. Consequently, the Commission should reduce the Company's recovery from ratepayers of its reasonable 2010 rate case expenses (*i.e.*, net rate case expenses after the other deductions recommended below). Specifically, the OCA recommends a 50% reduction.
9. In addition to addressing the Company's excessive and improper spending, reducing the Company's rate case expense recovery by 50% will encourage the Company to give more scrutiny to the frequency of the filing of rate cases.

Sole-Source Contracts

10. The Company used sole-source contracts for all of its outside consultants in this case.

See Company's Response to OCA 1-19 and OCA 4-4 (Attachments A and B). Also, the Company has no written policy related to the procurement of consultant services.

Attachment B.
11. The Commission and the OCA, on the other hand, are required to use a formal public competitive bidding process to retain consultants, and the OCA is also required to obtain the approval of the Governor and Executive Council and in certain circumstances, the approval of the Legislature's fiscal committee in order to hire consultants. When viewed in this light, and considering that the Company's costs are paid by the same individuals

who pay the Commission's and the OCA's costs, the Company's process is unjust, unreasonable and not consistent with the public interest.

12. Consequently, the Commission should reduce the Company's recovery from ratepayers of its reasonable 2010 rate case expenses (*i.e.*, net rate case expenses after the other deductions recommended below). Specifically, the OCA recommends a 50% reduction.
13. In addition to addressing the Company's excessive and improper costs, reducing the Company's rate case expense recovery by 50% will encourage the Company to give more scrutiny to the need for consultants in future rate cases and incent the Company to control these costs.

14. Outside Legal Services

15. Based upon information and belief, the Company may not have a written agreement with its outside legal counsel, McLane, Graf, Raulerson & Middleton ("McLane"). *See* Company's Response to OCA 7-4 in DW 10-091 (Attachment C). Consequently, there is no objective basis upon which the Commission or the OCA can verify that the Company affirmatively defined any terms of service or scope of work for this consultant before the consultant began providing services. There is also no objective basis provided by the Company to verify that McLane performed in accordance with pre-defined terms of service and scope of work, or to justify McLane's rate increases after January 2011. *See* Attachment C.
16. If the Company does not have a written agreement with McLane for legal services performed in DW 10-090, the Commission should disallow 50% (before splitting costs between shareholders and ratepayers, see below), or \$12,776.70, of the total costs associated with McLane of \$25,553.40. The Commission should also require the

Company to formally memorialize all contracts for services for all future rate cases. All future consultant contracts for work on rate cases should include – at a minimum – the terms and scope of service if the Company seeks to recover those costs from ratepayers.

Excessive Mileage Reimbursement

17. The Company's Rate Case Expense Request includes mileage reimbursement for multiple Company employees to travel separately to the same meetings or hearings at the Commission on the same day. For example, the Company included mileage reimbursement for two employees to travel to the Commission for the prehearing conference on July 14, 2010: \$18.00 for Charles Hoepper; and \$8.60 for Bonalyn Hartley.² The Company also includes mileage reimbursement for three employees to travel to the Commission for the technical session on August 18, 2010: \$18.00 for Charles Hoepper, \$20.00 for Dawn DeBlois, and \$8.60 for Bonalyn Hartley. Again, for the temporary rate hearing on September 15, the technical session on January 27, and the technical session on April 7, the Company seeks individual mileage reimbursement for multiple employees to travel to the Commission.
18. The Company provided no justification in its rate case expense request for its representatives to travel individually in separate cars and recover the costs associated with their individual travel. Consequently, the OCA recommends that the Commission disallow the recovery of the costs associated with multiple employees driving individually to activities at the Commission. Instead, the OCA recommends that the

² Based upon the rate case expense request submitted to Commission Staff in DW 10-090 as well as the request submitted in DW 10-091, on June 20, 2010, it appears as though most of the mileage reimbursement amounts for dates when the Company representatives attended events at the Commission for both DW 10-091 and DW 10-090 are split equally between the two cases. On at least one date, however, September 15, 2010, the Company seeks mileage reimbursement for two separate employees for two separate trips to Commission, one in the morning and one in the afternoon (*i.e.*, recovery of the costs of one round-trip through DW 10-090 as well as recovery of the costs of a second round-trip through DW 10-091).

Commission allow the recovery of the cost of mileage associated with one trip from Pennichuck's offices in Merrimack to the Commission's offices in Concord, or 64.8 miles round trip, at the mileage rate set by the IRS for 2010, or 50 cents per mile.³ On the four dates when the Company employees participated in activities related to both the Pennichuck Water Works, Inc. docket, DW 10-091 and Pittsfield Aqueduct Company docket, DW 10-090 (*i.e.*, the July 14, 2010 prehearing conference, the August 18, 2010 technical session, the September 15, 2010 temporary rate hearing, and the January 27, 2011 technical session), the single mileage reimbursement should be split equally between the two cases.

19. Consequently, the Commission should deny recovery of \$151.16 from the total rate case expense request on account of excessive mileage, leaving \$129.60 to recover from ratepayers $((4 \text{ trips} \times 64.8 \text{ miles}) \div 2) + (2 \text{ trips} \times 64.8 \text{ miles}) \times 50 \text{ cents per mile}$).

Inappropriate Expenses

20. The OCA opposes, and recommends that the Commission disallow, the recovery from ratepayers of costs related to first-class air travel; courier delivery; limousine or private car services; hotel room service; entertainment; recreational activities or services; personal services; and alcoholic beverages.
21. In discovery, the OCA sought to identify any charges included in the Company's proposed rate case expense recovery related to these types of costs. In its response, however, the Company merely directed the OCA to its rate case expense summary. Company's response to OCA 4-6 dated August 1, 2011 (Attachment D).

³ The Company's rate case expense request does not specify the mileage rate used to calculate the reimbursements requested for individuals.

22. It is appropriate and more efficient for the Company, as the requester of relief and party with the burden of proof, as well as the entity which incurred the charges in question, to specifically identify and support the costs included in its request for recovery.

Consequently, the OCA requests that the Commission order the Company and each of its consultants to affirmatively deny or confirm whether its proposed recovery amount includes costs related to first-class air travel; courier delivery; limousine or private car services; hotel room service; entertainment; recreational activities or services; personal services; and alcoholic beverages. To the extent that the Company's proposed recovery amount includes any of these types of costs, the Commission should disallow them.

23. Also, in future rate cases, the Commission should require the Company and its consultants to retain and produce itemized receipts related to any expenses for which ratepayer reimbursement is requested.

Staff Recommended Adjustments

24. In its Recommendation Regarding Recovery of Rate Case Expenses ("Staff Recommendation"), filed on August 4, 2011, the Staff reduced the Company's request by \$550.50.⁴ Staff's reduction consists of two adjustments: \$540 related to a legal invoice that actually pertains to services performed for the Company's affiliate, Pennichuck Water Works, Inc.; and \$10.50 related to a "minor misallocation of expense for court reporter services." Staff Recommendation, at p. 2.

25. The OCA concurs with the Staff's reduction.

⁴ The Commission's Audit Division did not conduct an audit of the Company's rate case expense request.

Competitive Bidding Requirements

26. In the spirit of fairness, the Commission should require, for all future rate cases (until the Commission issues rate case expense rules as required by RSA 365:8, X), that the Company use a structured, objective competitive bidding process to retain each and every outside rate case service provider. Of note, utilities in Massachusetts are required to use a competitive bidding process to retain consultants for rate cases. *See Staff Report on Rate Case Expenses (DG 08-009, June 30, 2010), at p. 6 and pp. 9-10.*
27. In addition to competitive bidding, the Commission should require that the Company engage the provider with the lowest bid unless there is an adequate justification for engaging a higher bidder. The OCA recommends that the Commission make it clear that a "long-term relationship," "institutional knowledge" or "expertise and familiarity" are not sufficient, by themselves, to justify the selection of a consultant other than the lowest bidder. Further, to the extent that such justifications are relied upon for the retention of a consultant who is not the lowest bidder, the bid should reflect and the Company should demonstrate quantifiable savings associated with these qualities.
28. Also, to address the Company's failure to use any competitive bidding for its rate case services, the OCA recommends that the Commission not allow the Company to recover any interest on the amount that the Commission ultimately authorizes it to recover from ratepayers. As a matter of policy, utilities in at least one other jurisdiction (Texas), may not recover interest on rate case expenses. *See Staff Report on Rate Case Expenses (DG 08-009, June 30, 2010), at p. 11.* Also, the Commission has the authority to penalize the Company pursuant to RSA 365:41, and withholding interest in this instance is a small but appropriate penalty.

Failure to Comply with Commission Rules

29. The Company's rate case expense request did not comply with the Commission's rules related to filings in adjudicative proceedings. The Company provided its rate case expense summary and supporting documentation to Mark A. Naylor, the Commission's Director of the Gas and Water Division, and Marcia A.B. Thunberg, a Staff Attorney. The cover letter accompanying the submittal indicates that copies of the request were provided only to the OCA and the Company's Vice President, Administration, Bonalyn J. Hartley. There is no reference to the Commission's Executive Director or the other party to this docket, the Town of Pittsfield, in the cover letter.
30. The Company's rate case expense request constitutes a request for Commission action, Puc 202.01 (a), *i.e.*, the approval of recovery of its rate case expenses. However, the Company failed to comply with the Commission's rules related to such filings in adjudicative proceedings. *See, e.g.*, Puc 203.02 (Filing Requirements); Puc 203.03 (Electronic Copies); Puc 203.04 (Form), Puc 203.05 (Pleadings). The Company did not request and the Commission did not grant a waiver of these rules. Further, it is the OCA's position that a waiver would be inconsistent with the public interest. Puc 201.05.
31. The Commission should require the Company in all future rate cases to formally file its rate case expense request and supporting documentation, including itemized receipts, pursuant to the rules related to filings in adjudicative proceedings. The Commission should include all future rate case expense filings by the Company – to the extent that they are not confidential – as public documents, along with all other pleadings in the Commission's docket books for these proceedings. Although the Staff Recommendation includes a portion of the Company's rate case expense request in this docket (*i.e.*, the

Company's cover letter and "lead schedule"), the Commission should also post to its website the remainder of that request (*i.e.*, invoices).

32. Despite referencing it in its letter enclosing the rate case expense "supporting invoices," the Company has failed to comply with the Commission's rules related to the filing of confidential information in an adjudicative proceeding. Puc 203.08 (Motions for Confidential Treatment), subsection (b) sets out the requirements that a utility must follow when seeking to protect confidential non-discovery information filed in an adjudicative proceeding with the Commission. Specifically, the Company must file a motion for confidential treatment, which provides a specific description of the information sought to be protected as well as the factual and legal basis for the protection pursuant to RSA 91-A:5 or other applicable law.
33. The Commission should require the Company to file a motion for confidential information pursuant to Puc 203.08(b), and the Commission should not allow the Company to recover the costs associated with that filing. The Commission should also require the Company to file a redacted version of its rate case expense request pursuant to the Commission's interim rule Puc 201.04.
34. Also, to address the Company's failure to abide by the Commission's rules, the OCA recommends that the Commission not allow the Company to recover any interest on the amount that the Commission ultimately authorizes it to recover from ratepayers. The Commission has the authority to penalize the Company pursuant to RSA 365:41, and withholding interest in this instance is a small but appropriate penalty.

Rulemaking Required

35. Lastly, the Commission should formally commence a rulemaking docket, as required by RSA 365:8, X to adopt rules, pursuant to RSA 541-A, relative to "standards and procedures for determination and recovery of rate case expenses."

WHEREFORE, the OCA respectfully requests that the Commission grant the following relief:


- A. Require the Company and each of its consultants to affirmatively deny or confirm whether its proposed recovery amount includes costs for first-class air travel; courier delivery; limousine or private car services; hotel room service; entertainment; recreational activities or services; personal services; and alcoholic beverages.
- B. Require the Company to quantify any costs included within its rate case expense request that are related to first-class air travel; courier delivery; limousine or private car services; hotel room service; entertainment; recreational activities or services; personal services; and alcoholic beverages;
- C. Initially reduce the Company's total rate case expenses, \$44,997.18, by the following amounts:
 - a. \$12,776.70 in costs related to the Company's outside legal counsel, McLane, on account of the Company's failure to memorialize the terms of service or scope of work; and
 - b. \$151.16 from the total rate case expense request on account of excessive mileage;

- c. Any amounts associated with first-class air travel; courier delivery; limousine or private car services; hotel room service; entertainment; recreational activities or services; personal services; and alcoholic beverages; and
 - d. \$550.50, as recommended by Staff.
- D. Reduce the subtotal derived from the above deductions, an amount of no more than \$15,759.41, by 50%, in order to account for the unjustness and unreasonableness of these expenses;
- E. Disallow the recovery of interest on the amount approved for recovery on account of the Company's failure to abide by multiple Commission rules;
- F. Require, for all future rate cases, that the Company use a structured, objective competitive bidding process to retain each and every outside rate case service provider; require that the Company engage the provider with the lowest bid unless there is an adequate justification for engaging a higher bidder; make it clear that "expertise and familiarity" with the Company are not sufficient, alone, to justify the selection of a consultant other than the lowest bidder; and require the demonstration of quantifiable savings associated with "expertise and familiarity" to the extent that the Company retains a consultant who is not the lowest bidder;
- G. Require the Company in all future rate cases to formally file its rate case expense request and supporting documentation pursuant to the rules related to filings in adjudicative proceedings;
- H. Include the remaining portion of the Company's rate case expense request in this proceeding (*i.e.*, portion not attached to the Staff Recommendation) – to the extent

that it is not confidential - as a public document, along with all other pleadings in the Commission's docket book for this proceeding;

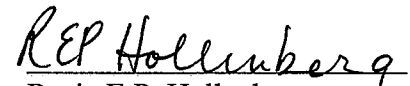
- I. Require the Company to file a motion for confidential information pursuant to Puc 203.08(b);
- J. Require the Company to file a redacted version of its rate case expense filing pursuant to the Commission's interim rule Puc 201.04;
- K. Formally commence a rulemaking docket, as required by RSA 365:8, X, to adopt rules, pursuant to RSA 541-A, relative to "standards and procedures for determination and recovery of rate case expenses;" and
- L. Grant such other and further relief as it may determine to be consistent with the public interest.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was forwarded this 9th day of August 2011 to the service list by electronic mail.


Rorie E.P. Hollenberg