

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 12-085

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.
Permanent and Temporary Rate Increase Proceeding

N.H. OFFICE OF THE CONSUMER ADVOCATE'S CLOSING STATEMENT

The New Hampshire Office of the Consumer Advocate (OCA) requests the following relief from the New Hampshire Public Utilities Commission (Commission):

1. Partial Settlement Terms - Approve, and incorporate into its order on the merits, the terms of partial settlement filed by the OCA, Aquarion Water Company of New Hampshire (Company) and the Staff of the Commission (Staff) on May 22, 2013;
2. Return of Equity - Grant the Company a return on equity (ROE) of 9.365%, which represents the unadjusted mid-point of the two experts' DCF mid-points, and, when used in conjunction with the terms of partial settlement, results in a just and reasonable revenue requirement; and
3. Public Fire Protection Cost Allocation - Deny the Town of North Hampton's unsupported request to reduce by 30% the public fire protection class's allocation of the revenue requirement increase, and instead allocate the increase in the manner recommended by both the Company and Staff, equally across all the customer classes.

In support of the granting of this relief, the OCA respectfully submits this closing statement.

1. Partial Settlement Terms

The OCA, Staff and Company submitted proposed settlement terms in resolution of certain contested issues in this proceeding.¹ The OCA views these settlement terms as a reasonable compromise of the issues raised in the OCA's testimony including the proposed level of wage expense and the continuation of the Water Infrastructure and Conservation Adjustment (WICA) pilot program.²

The partial settlement secures value for customers in the form of requiring a cost-of-service study (COSS) in the Company's next base rate case.³ The COSS will provide data to

¹ Hearing Exhibit 4.

² Transcript Day 1, p. 28, l. 22 through p. 29, l. 1.

³ Exhibit 4, para. 13. Transcript Day 1, p. 29, l. 1-9.

quantify a subsidy, if any, paid by general meter customers on account of a reduced class allocation to public fire protection customers that has existed since a 2005 docket.⁴ A new COSS will provide an informed basis for cost-based rates going forward.

The partial settlement also provides the potential for improvements to the pilot WICA's operation. These improvements respond to the OCA's concerns that WICA only be used for planned, incremental capital expenditures for safety and/or reliability purposes.⁵ WICA recovery should not include the costs of all emergency repairs or the costs of ordinary meter replacement; at least some level of emergency repair and the costs of maintaining meters are routine parts of any utility's business and should not be subject to special ratemaking treatment.⁶ Also, by limiting the recovery level of emergency repair costs, the Company is incented to act before system failures occur. In other words, the Company "*proactively* replace[s] distribution facilities directly related to improving the reliability and safety of the distribution system"⁷ – consistent with the purpose of the WICA and the language in the Company's tariff.⁸

In addition, the partial settlement terms include improvements to the Company's annual reporting requirements for the WICA pilot as Mr. Rubin recommended in his testimony.⁹ The new reporting requirements are akin to existing requirements of the Company's affiliate in Connecticut.¹⁰ They will provide more information about the Company's WICA prioritization analysis and decision-making. The OCA views this increased reporting as a way of improving both the context in which the Commission's WICA decisions are made as well as the transparency of the WICA pilot program and cost recovery. The OCA also views this settlement term as providing the Company with an opportunity to develop, and better demonstrate in its next rate case, how the WICA pilot spending is related to and increases system reliability and safety for the benefit of customers.¹¹

⁴ *Aquarion Water Company of NH*, Order No. 25,019, 94 NH PUC 510, 519 (2009) *citing* Exh. 4 at 39-52 in Docket No. DW 05-119 ("Such departures [from straight cost of service rate design], however, are not uncommon and Aquarion itself modified the 2005 Cost of Service results and chose to recognize only 75% of the functional allocation in an effort to mitigate the increase to its public fire protection customers.")

⁵ Exhibit 4, para. 7 and 8. Transcript Day 1, p. 29, l. 24 through p. 30, l. 15.

⁶ Rubin Direct (Exhibit 12), p. 3, l. 12-23; and p. 11, l. 3-21.

⁷ Rubin Direct (Exhibit 12), p. 4, l. 16-17 (emphasis added).

⁸ Transcript Day 1, p. 30, l. 16 through p. 32, l. 15.

⁹ Exhibit 4, para. 9. Transcript Day 1, p. 32, l. 16-24; Rubin Direct (Exhibit 12), p. 12, l. 1-10.

¹⁰ Transcript Day 1, p. 33, l. 1-9; Rubin Direct (Exhibit 12), p. 12, l. 1-10.

¹¹ Transcript Day 1, p. 33, l. 10-15.

While the partial settlement terms do not address the issues of increased lost/unaccounted-for water¹² and decreases in distribution O&M spending,¹³ both of which Mr. Rubin observed with concern, the deferral of the WICA pilot evaluation¹⁴ leaves that issue in dispute for the future evaluation of the WICA pilot, in the Company's next rate case.¹⁵ At that time, the OCA will look to the Company to demonstrate more than that WICA reduces regulatory lag related to cost recovery for the majority of its capital investment; instead, the Company will have an opportunity to demonstrate that the fundamental focus of its WICA is the enhancement of reliability (and reduction of water losses) through proactive replacement of infrastructure that is nearing the end of its useful life.

Lastly, with regard to issues contested by the OCA, the partial settlement terms resolve concerns related to the application of certain new fees (*e.g.*, pay-at-the-door fee and missed-appointment fee).¹⁶ The changes to these fees, which the OCA recommended in Mr. Rubin's testimony, provide the opportunity for a more balanced and reasonable structure and application of these fees for customers.¹⁷

The Commission may dispose of contested issues in adjudicative proceedings through settlement.¹⁸ Commission approval of settlement terms is appropriate if the results are just and reasonable and in the public interest.¹⁹ In judging whether the settlement terms meet this standard, the Commission may consider the diversity of the settling parties' interests,²⁰ as well as the absence of objection of the non-settling parties.

In addition to the benefits described above, the proposed settlement terms of the OCA, Staff and the Company, if approved by the Commission, will avoid the significant expense – on the part of the parties and the Commission - of litigating the merits of certain contested issues. As a compromise and liquidation of the issues covered by the proposed terms of settlement, when combined with the recommended ROE discussed below, the results are just and reasonable

¹² Rubin Direct (Exhibit 12), p. 5, l. 12-16; and p. 6, l. 12 through p. 8, l. 2.

¹³ Rubin Direct (Exhibit 12), p. 8, l. 19 through p. 9, l. 4.

¹⁴ Exhibit 4, para. 6.

¹⁵ Transcript Day 1, p. 33, l. 22 through p. 34, l. 11.

¹⁶ Exhibit 4, para. 11 and 12. Transcript Day 1, p. 34, l. 12-20. Rubin Direct (Exhibit 12), pp. 13-16.

¹⁷ Transcript Day 1, p. 34, l. 12-20. Rubin Direct (Exhibit 12), pp. 13-16.

¹⁸ RSA 541-A:31, V(a).

¹⁹ N.H. Code Admin. Rules Puc 203.20 (b).

²⁰ See *National Grid plc*, Order No. 24, 777, 92 NH PUC 279, 327 (2007).

and consistent with the public interest. Consequently, the Commission should approve the terms of settlement as proposed.

2. Return on Equity

The Commission has historically used the Discounted Cash Flow (DCF) analysis to determine ROE.²¹ The Commission heard from two experts, each with DCF analysis and recommendations. One expert is aligned with the interests of the Company's shareholders. The other is aligned with the interests of customers. The ranges from each expert were close numerically: Mr. Parcel's DCF range was 9.0 to 9.6% (9.3 mid-point);²² and Ms. Ahern's corrected DCF range was 9.32 to 9.54% (9.43% mid-point).²³

Consistent with the Commission's responsibility to balance the interests of shareholders and customers,²⁴ the OCA recommends that the Commission set the Company's ROE at the midpoint of the two experts' DCF midpoints. The result is an ROE of 9.365%,²⁵ which, when combined with the revenue requirement terms of the partial settlement, will produce just and reasonable rates.

The Commission should reject the Company's request to adjust the DCF results for one or more risk adjustments. The Commission has historically rejected risk adjustments to DCF results.²⁶ Also, as Mr. Parcell testified, the proposed financial and business risk adjustments are not appropriately applied in the Company's circumstances.²⁷ It is not appropriate to allow an upward adjustment to ROE on account of leverage in the Company's capital structure, when the capital structure is complex due to parent/affiliate interrelations and is not transparent or capable of evaluation.²⁸ Similarly, it is not appropriate to increase a utility's ROE on account of its owner's choice of corporate structure, a collection of "small" inter-related or affiliated

²¹ *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972, 94 NH PUC 256, 286-287 (2009).

²² Parcell Direct (Exhibit 13), p. 3, l. 4-5.

²³ Transcript Day 2 AM, p. 49, l. 4-5; and p. 66, l. 7-12.

²⁴ RSA 363:17-a **Commission as Arbitrator**. – The commission shall be the arbitrator between the interests of the customer and the interests of the regulated utilities as provided by this title and all powers and duties provided to the commission by RSA 363 or any other provisions of this title shall be exercised in a manner consistent with the provisions of this section.

²⁵ Transcript Day 2 AM, p. 49, l. 4-5; and p. 66, l. 7 through p. 67, l. 8.

²⁶ *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972, 94 NH PUC at 291 (Commission rejected adjustments to DCF results on account of leverage – or financial risk – and floatation costs).

²⁷ Parcell Surrebutal (Exhibit 14), pp. 19-22.

²⁸ Parcell Surrebutal (Exhibit 14), pp. 19-21.

companies.²⁹ Stated another way, the assumptions underlying these risk adjustments are not known to be present for the Company. The Company is in control of its financial and corporate structures (and the information it shares about these structures), and it has not shown that just and reasonable rates require risk adjustments to its DCF ROE on account of its strategic business choices about these structures.

We do know, however, the Company has a reconciling capital investment adjustment mechanism that makes it whole – on an annual basis - for more than 50% of its annual capital spending each year.³⁰ To the extent that the Commission is persuaded by the Company to make one or more upward risk adjustments to the DCF results, the OCA asks the Commission to consider as a full offset a downward adjustment based upon the Staff's testimony about ROE.³¹ Specifically, on account of the reduction in regulatory lag – and, consequently, the reduction in the risk of cost recovery of “big [capital] items”³² – that the WICA pilot provides to the Company, the OCA asks the Commission to completely offset any adjustments to the ROE due to increased financial and/or business risk. As a result, the ROE would be set at the midpoint of the two DCF midpoints, or 9.365%.

3. Public Fire Protection Cost Allocation

The OCA asks the Commission to distribute the proposed revenue requirement increase equally across all customer classes. This request is consistent with the testimony and recommendations of the Company's witness, Mr. Dixon,³³ and Mr. Naylor of the Commission staff.³⁴

The equal allocation of the Company's revenue requirement increase is not precluded by the language in the Commission's order approving the settlement of the Company's last rate case. This language, which North Hampton pointed out in cross examination of the settlement panel, states that the class allocations of the Company's then-increased revenue requirement not be evaluated until the “time of Aquarion's next cost of service study.” Requiring equal

²⁹ Parcell Surrebuttal (Exhibit 14), pp. 21-22. Of note, at least for purposes of employee wages, the Company does not consider itself small. See McFarland Direct (Exhibit 11), p. 14, l. 5-13 (employer comparables included General Electric, International Paper, New York ISO, Philip Morris USA and Verizon Communications).

³⁰ Transcript Day 1, p.183, l. 1-8. Transcript Day 2, p. __, l. __ (Naylor).

³¹ Naylor Direct (Exhibit 9), p. 4, l. 7-19; p. 7, l. 6-12.

³² Transcript Day 1, p.183, l. 1-8.

³³ Dixon Direct (Exhibit 5a), Bates p. 89, l. 17-18; Transcript Day 1, p. 51, l. 8-11.

³⁴ Transcript Day 1, p. 38, l. 2-10.

allocation of the new revenue requirement increase does not disturb the allocation that resulted from that prior rate case. Rather, it maintains the previously-settled and Commission-approved inter-class allocation from the Company's 2009 rate case and only allocates the revenue requirement increase equally to all classes.

It is not just or reasonable to allocate the Company's new revenue requirement increase as advocated by North Hampton. The less-than-full cost allocation to public fire protection that resulted from that settlement was part of a comprehensive settlement. That settlement specifically provided that the terms would not be precedential.³⁵ No such comprehensive settlement is presented in this proceeding and the Town of North Hampton has not sustained its burden of proving that the reduced allocation it seeks to perpetuate will result in just and reasonable rates.

The Town did not conduct a cost of service study.³⁶ The Town has not quantified the impact of its recommendation.³⁷ That is, the Town has not quantified what metered rates would be if its proposal is adopted and what they would be if its proposal is not adopted.³⁸ The Town has not quantified how much money would be shifted from its public fire allocation to the allocation to other customers if its proposal is approved.³⁹ The Town has not shown that the Company's proposed public fire rates exceed the cost of service for fire protection or that its ISO fire flow requirements are such that it is paying for more fire protection than it should.⁴⁰ Lastly, the town has not considered any other alternatives for recovering the costs of public fire protection from only its taxpayers that are customers of the Company.⁴¹

For all of these reasons, the OCA opposes the Town of North Hampton's request to shift its new fire protection costs to other customers and asks the Commission to follow the recommendations of the Company and its Staff, to allocate the new revenue requirement increase equally to all customer classes. Doing so results in "cost-based" rates and is consistent with the Company's last COSS.⁴²

³⁵ DW 08-098 Settlement, p. 9 sec. III para. 2.

³⁶ Transcript Day 2, p. ___ (Landman).

³⁷ Transcript Day 2, p. ___ (Landman).

³⁸ Transcript Day 2, p. ___ (Landman).

³⁹ Transcript Day 2, p. ___ (Landman).

⁴⁰ Transcript Day 2, p. ___ (Landman).

⁴¹ Transcript Day 2, p. ___ (Landman).

⁴² Transcript Day 1, p. 51, l. 11-16.

Conclusion

The OCA respectfully requests the Commission grant the relief requested. Thank you for the opportunity to present this closing statement.

Submitted by:

6-7-13
Date

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