State of New Hampshire

Public Utilities Commission

DW 17-165

Abenaki Water Company, Inc. – Rosebrook Water System

Request for Change in Rates

Objection to Omni Mount Washington Hotel, LLC's Motion for Rehearing of Order No, 26,295

On October 31, 2019, Omni Mount Washington Hotel, LLC (Omni), filed a timely Motion for Rehearing and Response Regarding Service Company Charges (Motion). Staff of the Public Utilities Commission (Staff) hereby Objects to this Motion and states as follows:

I. INTRODUCTION AND BACKGROUND

On October 31, 2019, Omni filed its Motion, seeking rehearing, pursuant to RSA 541:3, of *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,295 (October 1, 2019) (Surcharge Order). The Surcharge Order, in part, authorized Abenaki Water Company, Inc.'s, Rosebrook Water System (Abenaki or the Company), to recover $39,533 in temporary-permanent rate recoupment. That recoupment represented the difference between revenues billed by Abenaki since May 1, 2018 (the effective date of the temporary rate increase authorized in *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,171 (August 31, 2018)), and January 1, 2019 (the effective date of permanent rate increase authorized in *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,205 (December 27, 2018)) . The Surcharge Order further authorized Abenaki to collect $79,657 in rate case expenses.

In the Surcharge Order, the Commission granted Abenaki the authority to recover those combined amounts via three different monthly flat-fee surcharges for each of the Company's

different customer classes, as designated by the Commission. The Surcharge Order authorized Abenaki to charge: 1) $4.53 a month for 18 months from its residential customers; 2) $13.95 a month for 18 months from its commercial customers; and 3) $3,595.38 a month for 24 months from Omni. The temporary-permanent rate recoupment component of the monthly surcharges was based on the historical usage of each customer class. In doing so, the Commission noted that no one objected the $39,533 amount or method of recoupment.

The Surcharge Order further stated that the rate case expense portion of the surcharges, totaling $79,657, were allocated differently to each customer class, resulting in in a uniform percentage increase on each existing customer's bill, when calculated over an 18 month recoupment period for all customer types. That equated to an approximate 15 percent increase for each customer type. The Commission reasoned that the uniform increase of all customer bills is "more equitable because the increase in all customer bills will proportionately be the same relative to the rate case expenses." Surcharge Order at 8.

For Omni, the Commission authorized recovery over a 24-month period, to mitigate the potential rate impact; the other customer classes were subject to an 18-month recovery period. As a result, the Commission ordered Omni to pay $3,595.38 a month, consisting of $1,352.64 in temporary-permanent rate recoupment and $2,242.74 in rate case expenses. Omni does not dispute the amount or method of recovery for the $1,352.64 in temporary-permanent rate recoupment. Omni's Motion, however, disputes the $2,242.74 rate case expense component of the surcharge only. Omni correctly notes that the surcharge allocates approximately 68 percent, or $53,825.76, of the total rate case expenses.

Omni's Motion argues that the Commission "overlooked and mistakenly conceived certain matters, and the decision [contained in the Surcharge Order] is unlawful and

unreasonable." Motion at 1. RSA 541:4 requires a motion for rehearing to set forth fully every ground upon which it is claimed that the decision or order complained is unreasonable or unlawful. Omni furthers its argument by providing four claims: 1) the Commission inappropriately allocated the fixed cost of rate case expenses as if they were variable costs; 2) the Commission arbitrarily disregard precedent; 3) the Commission failed to provide sufficiently detailed findings of fact and rulings of law, pursuant to RSA 541-A:35; and 4) the Commission violated Omni's right to due process.

II. STANDARD OF REVIEW FOR REHEARING

Under RSA 541:3, the Commission may grant rehearing when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding. *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977). Good reason may also be shown by identifying specific matters that were "overlooked or mistakenly conceived" by the Commission. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful Motion for Rehearing does not merely reassert prior arguments and request a different outcome. *Investigation Into Grid Modernization*, Order No. 26,275 at 3 (July 26, 2019).

III. ARGUMENT

A. The Motion Should Be Denied as Omni Fails to State a Good Reason for Such Relief

As listed above, Omni posits four claims that the Surcharge Order is either unreasonable or unlawful. Omni's claims, however, fail to achieve the statutory standard of good reason required for rehearing, as addressed below.

1. **The Commission Did Not Overlook, Mistakenly Conceive, or Fail to Recognize Basic Principles of Ratemaking In Its Allocation of Rate Case Expenses**

Omni argues that the Surcharge Order's allocation of rate case expenses is unreasonable because the Commission "fails to recognize basic principles of ratemaking regarding the recovery of fixed and variable costs, and assigning costs to those customers who cause them" in relation to rate case expenses. Motion at 3. Omni further argues that it is "not economically rational or reasonable as a matter of ratemaking to collect the fixed costs of rate case expenses through the volumetric rate because rate case expenses do not vary with output or usage." *Id* at 4. As a preliminary matter, the argument fails because Omni does not meet its burden of proof to achieve the relief it seeks through this argument.

The Motion lacks any authority or precedent to support its claim that the Commission supposedly misconceived the "basic ratemaking principles." The Motion is even devoid of any citations to support the existence of its "fixed vs. variable" theory of rate case allocation. Omni merely offers a hypothetical standard of rate case expense allocation. That is true also of Omni's claim that "the Commission [applied] an approach sometimes used in rate cases to increase fixed charges without benefit of a cost-of-service study." Motion at 3.

Staff is unaware of any strict interpretation of ratemaking principles regarding the allocation of rate case expenses, other than the resulting rates must be just and reasonable, pursuant to RSA 378:7. Thus, without supporting evidence, the good cause for rehearing cannot be shown.

Regardless of the Motion's lack of authority, however, Omni's further "fixed v. variable costs" arguments also fail. That argument appears to conflate the mandate and reasoning of the Surcharge Order with Staff's August 15, 2019, recommendation. By way of background, Staff recommended that the surcharge, consisting of both the rate case expenses and temporary-

permanent rate recoupment, should be usage-based at a rate of $2.566 per 1,000 gallons for 18 months (usage-based). Staff, Recommendation, August 15, 2019, at 4. Staff's recommendation differed from Abenaki's original allocation proposal, which requested an even allocation of the rate case expenses and temporary-permanent rate recoupment amongst Abenaki's total number of customers (meter-based), via a single, monthly surcharge. Abenaki Water Company, Inc., Proposed Surcharge Calculations at 1, January 28, 2019.

Omni replied to Staff's proposal, agreeing to a usage-based surcharge for the temporary-permanent rate recoupment surcharge, but insisting that the rate case expenses should be allocated by a meter-based surcharge. Omni Mount Washington Hotel, LLC, Response to Staff Recommendation at 2, September 9, 2019. The Motion properly noted that the difference in the meter-based surcharge to a usage-based surcharge increased Omni's portion of rate case expenses from 5.2 percent to 82 percent. Motion at 2-3.

Omni's argument oscillates from condemning Staff's recommendation of a usage-based allocation, to criticizing the Surcharge Order, which authorized neither a usage-based nor a meter-based surcharge. The Surcharge Order, instead, authorized a surcharge for rate case expenses that produces a uniform percentage increase in all customer classes (percentage-increase). As an aside, it is unclear why the Motion restates objections to Staff's recommendation as the Commission ultimately did not adopt that approach. *See* Omni Mount Washington Hotel, LLC, Response to Staff Recommendation, September 9, 2019, at 2 ("there is no similar linkage between Omni's water usage and the level of rate case expenses that Abenaki incurred"); and Motion at 4 ("[a]s for the rate case expenses, however, there is no such link between Omni's usage and the size of the rate case expenses"). As the Surcharge Order authorized a percentage-increase surcharge, arguments regarding Staff's recommendation of a

usage-based surcharge contained in the Motion should be disregarded as the two surcharge methods are starkly different.

Omni attempts to minimize the difference in the reasoning and authorization of the Surcharge Order and Staff's recommendation, noting that the Commission had taken a "slightly different [tack]," or "moderates somewhat" Staff's usage-based allocation, maintaining that the percentage-based surcharge is "usage driven." Omni's reasoning that the Commission misconceived rate case expense allocation as a variable cost, which is related to Staff's usage-based proposal, is flawed. The Commission did not adopt a usage-based surcharge.

While Staff's recommendation noted a difference in the impact of the proposed surcharge on customer bills, Staff certainly did not propose the reasoning ultimately contained in the Surcharge Order. That difference is evident in the reduction of Omni's surcharge, from that recommended by Staff and ultimately ordered by the Commission. The Commission clearly adopted its own method by setting a uniform percentage increase. As such, Omni's argument that the Commission mistakenly conceived the allocation of rate case expenses as variable cost is inapplicable, as it ultimately did not utilize a usage-based allocation approach.

Omni's further claim that "neither Staff nor the Commission [put] forth any facts about" Omni's ability to pay as compared to the residential customers also fails. While the record may not explicitly include such facts, those facts are not required, by statute or precedent, to be disclosed in consideration of just and reasonable rates, pursuant to RSA 378:7. Thus, the Commission did not err in its evaluation.

Lastly, Omni's argument that the Commission misconceived basic ratemaking principles fails overall as the Commission has the authority to allocate rate case expenses as it did in the Surcharge Order. Pursuant to RSA 365:38-a, the Commission may allow recovery of costs

associated with utility proceedings before the Commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest. The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of business and thus appropriate for recovery through rates. *Hampstead Area Water Company, Inc.*, Order No. 26,248 at 2 (May 6, 2019). The Commission evaluates "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." *Kearsarge Telephone Company*, Order No. 24,372 at 4 (September 17, 2004).

In setting those rates, which includes rate case expenses per RSA 378:7, the Commission "has broad statutory authority to set rates in addition to 'powers inherent within its broad grant' of express authority." *Northern Utilities, Inc.*, Order No. 26,186 at 7 (October 31, 2018). "Neither [New Hampshire] statutes nor the decisions of [the New Hampshire Supreme Court] require that the Commission use a particular formula or a combination of formulas in performing its statutory duty of determining whether rates are just and reasonable among themselves as well as in total." *Granite State Alarm, Inc. v. New England Tel. & Tel. Co.*, 111 N.H. 235, 238 (1971). "In arriving at is conclusions, the Commission, in addition to the testimony presented at the public hearing, could rely also on the exhibits introduced, the records and reports required to be filed with it by the company, and on the Commission's own expertise as well as that of its staff. *Id.*

Considering the wide latitude afforded the Commission in determination of just and reasonable rates, grounded in solid precedent and above-mentioned statutory authority, the Commission's determination to allocate the rate case expenses with an even percentage increase

across all customer classes is certainly authorized. Thus, the Surcharge Order's allocation of rate case expenses is lawful and reasonable.

2. The Commission Did Not Overlook Precedent

Omni argues that Surcharge Order is unlawful as the Commission disregarded precedent, and failed to acknowledge and explain such departure. Again, Omni's argument fails to support good reason for rehearing as there is, in fact, Commission precedent for allocation of rate case expenses, for a water company, similar to its allocation in the Surcharge Order.

In *Abenaki Water Co., Inc.*, Order No. 25,945 in Docket No. DW 15-199 (September 26, 2016), the Commission departed from the strict meter-based allocation method of recovery for rate case expenses. In that docket, the Commission authorized a consolidation of Abenaki's Bow and Belmont systems rates, and an increase in the company's rates. *Abenaki Water Company, Inc.*, Order No. 25,905 (June 3, 2016). The Commission also authorized an increase in Belmont's sewer rates. *Id.*

In authorizing the amount and allocation of rate case expenses, the Commission stated:

> "[Abenaki] proposed to allocate rate case expenses in proportion to the revenue received from various customer groups. The results of this methodology produced differing amounts of rate case expenses for similar customers. Under the company's proposal, Bow single family water customers would pay $8.13, Belmont single family water customers would pay $6.46, and Belmont families living in apartment buildings would pay $8.00 per month for rate case expenses. We believe it would be more appropriate to allocate rate case expenses evenly among residential customer classes. Accordingly, we direct Abenaki to use the sum of all residential water revenue from single family Bow and Belmont homes and Belmont Multi-Family homes and divide the proportionate share of rate case expenses by the total number of residential customers to produce a uniform rate case expense surcharge for each residential water customer. We direct a similar calculation for single and multi-family sewer customers … we believe the portion of the surcharge related to rate case expenses will be fairer by making it the same for each type of customer." Order No.25,945 at 8-9.

While the rate case expense was divided evenly within each customer class by the number of customers in that class, the rate case expense was apportioned to each customer class based on that customer classes' water revenue. Thus, three different water customer classes paid three different monthly surcharges over 30 months: residential water customers paid $5.77 a month; Commercial Class A customers paid $73.98 per month; Commercial Class B customers paid $30.06. Order No. 25,945 at 9.

While not directly cited by the Surcharge Order, Order No. 25,945 provides Commission precedent, within its jurisdiction over water utilities. Order No. 25,945 provides evidence that not every water utility's rate case expense is allocated utilizing the meter-based method. Thus, Omni's argument that the Surcharge Order is a case of first impression is rendered invalid.

Furthermore, Order No. 25,945 contains the allocation of rate case expenses and supported reasoning which is almost identical that contained in the Surcharge Order. There, the Commission allocated rate case expenses based on the percentage of revenue that the customer class produced, which is somewhat usage-based. The similarity of the orders lies in the fact that the Commission divided the rate case expenses and assigned a different surcharge among the customer classes. That further diminishes Omni's argument that the Commission misconceived and overlooked basic principles of ratemaking. Counter to Omni's claim, the Commission has previously assigned rate cases expenses for water utilities other than the meter-based approach.

Omni's own admission that precedent exists, contained in the Motion, further minimizes its claim. Omni recounts Staff's August 15, 2019, recommendation which cited *Northern Utilities, Inc.*, Order No. 26,129 (May 2, 2018), a recent Commission decision approving a settlement agreement. Motion at 5. That settlement contained a provision which allocated rate case expenses on a usage-basis. *Id.* Omni further states that it responded to Staff's

recommendation, by classify the order is "ill suited as *precedent*." *Id.* at 6 (emphasis added). While it may distinguish that precedent as "inapt," it is nonetheless an acknowledgement that precedent exists. *Id.* Furthermore, precedent approving a settlement agreement is not inapt, as claimed by Omni as precedent containing approval of a settlement agreement is just as supportive. In approving a settlement agreement, the Commission must independently determine that a settlement agreement, and the resulting rates contained therein, meet the applicable statutory standard. *Hampstead Area Water Company, Inc.*, Order No. 26,195 at 5 (November 28, 2018).

Lastly, the Commission has issued numerous decisions allocating rate case expenses distinct from meter-based allocation. *See Unitil Energy Systems, Inc.*, Order No. 26,007 at 8 (April 20, 2017) (rate case expenses are to be recovered by a "uniform rate per [kilowatt hour]"); *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 26,122 at 52 (April 27, 2018) ("We will provide for recovery of just and reasonable rate case expenses through the [local delivery adjustment charge]"); *New Hampshire Gas Corporation*, Order No. 25,118 (June 24, 2010) (applying a per-therm surcharge for rate case expenses); and *Concord Steam Corporation*, Order No. 25,100 at 7 (May 6, 2010) (order approving recovery of rate case expenses "through at $0.06 per [1,000 pounds of steam] surcharge").

The fact the majority of the precedent does not pertain specifically to water utilities does not matter. The Commission's authority to set just and reasonable rates, per RSA 378:7, including the allocation of rate case expenses, applies to all of its regulated utilities. No exception for water utilities and the application of rate case expenses exists.

In light of the ample Commission precedent, Omni's claim that the Surcharge Order ignored precedent dictating that the rate case expense be allocated strictly on a per meter basis, rendering it unlawful and unreasonable, cannot be sustained.

3. The Surcharge Order Provided Sufficiently Detailed Findings of Fact and Conclusions of Law Pursuant to RSA 541-A:35

Omni argues that the Surcharge Order fails to contain detailed findings of fact and conclusions of law required by RSA 541-A:35. Omni cites the *Appeal of City of Nashua* for support, quoting that a decision containing summarized evidence and describing the parties' opposing views "without making specific factual findings in support of its own conclusions" fails to meet its statutory obligation. 138 N.H. 261, 263 (1994). That precedent, concerning a decision by the New Hampshire Board of Tax and Land Appeals and Tax (Board), however, is misleading. First, the crux of the appellant's argument, the City of Nashua, is based on the argument that the Board made findings on evidence outside the scope of the record and made findings based on extraneous evidence, both of which are not at issue here. *Id.* at 264. Furthermore, the New Hampshire Supreme Court ultimately upheld the Board's decision. *Id.* at 267.

The precedent that is better aligned to the instant case is *Legislative Utility Consumers' Council v. Granite State Elec. Co.*, 119 N.H. 359 (1979). The appellant in that proceeding, the Legislative Utility Consumers' Council (LUCC), argued that, as a matter of law, the Commission did not make the essential findings to support an attrition allowance for the utility. *Id.* at 362. The Court ruled stated that:

> "[while the findings] are sparse ... [t]he Commission would be wise to incorporate more elaborate findings into future rate order reports. This court long ago warned that its function of reviewing administrative orders must be facilitated by agency findings. Although detailed and specific reasons for the attrition finding

> would have enhanced our ability to review the Commission's order, they are not mandated. *Id.* at 363 (emphasis added).

The Court goes on to state that the Commission's sparse findings included an erosion of earnings, supported by testimony that all electric utilities faced increased costs. *Id.*

As compared to the previous precedent, the Surcharge Order contains far more than sparse findings. The Commission details that it reviewed the evidence in the record and drew upon the input of all participants involved. Surcharge Order at 7. The Commission further acknowledges that, as a matter of law, it set the surcharge parameters, including the separation of customer classes and its allocation of the rate case expenses and temporary-permanent rate recoupment. *Id.* The Commission further cites its reasoning in applying a percentage-increase method to allocate rate case expenses as "more equitable because the increase in all customer bills will proportionately be the same relative to the rate case expenses." *Id.* at 8.

Furthermore, there is significant evidence in the record allowing for the Commission to set the resulting rate case expense surcharge and allocation. Staff's recommendation provides the average customer's bill in each class, comparing the impacts of a meter-based and usage-based approach. Staff, Recommendation, August 15, 2019. The Commission, relying on the record and input of the participants, calculated a uniform percentage increase which is both lawful and reasonable. As stated "[i]n arriving at is conclusions, the Commission, in addition to the testimony presented at the public hearing, could rely also on the exhibits introduced, the records and reports required to be filed with it by the company, and on the Commission's own expertise as well as that of its staff. *Granite State Alarm, Inc., v. New England Tel. & Tel. Co.*, 111 N.H. 235, 238 (1971) (emphasis added).

Furthermore, with the inclusion of the above-mentioned findings, the Surcharge Order fulfills the statutory requirements of all Commission orders. *See* RSA 363:17-b ("A final order

shall include, but not be limited to: 1) [t]he identity of the parties; 2) [t]he positions of each party on each issue; 3) [a] decision on each issue including the reasoning behind that decision; and 4) [t]he concurrence or dissent of each commissioner participating the decision").

According to New Hampshire Supreme Court precedent, the Surcharge Order contains sufficient findings of fact and conclusions of law and fulfills the standards of RSA 363:17-b and RSA 541-A:35. As such, the Surcharge Order is not unlawful or unreasonable.

4. <u>The Commission Did Not Violate Omni's Due Process</u>

Omni argues that the Commission violated its due process rights by "adopting a new policy on the allocation of rate case expenses in a water utility rate case" and "deciding a case of first impression," which greatly increased Omni's rates without the benefit of a notice or hearing. First, as discussed above, the Surcharge Order was not a case of first impression and the resulting allocation provided just and reasonable rates. Second, Omni again fails to provide any supporting authority to prove its due process violation claim. Third, Omni fails to mention the number of opportunities provided to it by the Commission to respond to Staff's recommendation and the possibility of a usage-based allocation, as applied to all customers, which actually proposed higher rates for Omni.

"A primary consideration of due process is fundamental fairness." *Central Water Company, Inc.*, Order No. 23,386 at 7 (January 7, 2000) (citing *City of Claremont v. Truell*, 126 N.H. 30, 35 (1985). "Due process requires notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.*

Omni cannot claim that the Commission was unfair. The Commission provided ample opportunity for Omni to present their objections, on the record, to Staff's recommendation. *See*

Commission, Secretarial Letter – Extension of Time to Respond to Staff Recommendation, September 3, 2019 (granting Omni's August 26, 2019 request to hold the record open until September 9, 2019, almost an entire month after Staff filed its August 15, 2019, recommendation). Omni responded on September 9, strongly opposing Staff's usage-based proposal. Omni Mount Washington Hotel, LLC, Response to Staff Recommendation. Omni renewed its opposition to the usage-based surcharge in its objection to Abenaki's motion to bifurcate the rate case expenses and temporary-permanent rate recoupment surcharge, on September 23. Omni Mount Washington Hotel, LLC, Objection to Motion to Bifurcate at 1. Omni filed both responses in advance to the Surcharge Order's issuance.

Furthermore, Omni never requested a hearing in any of its filings before issuance of the Surcharge Order. In fact, the Motion is its first request for a hearing on this matter. Prior to the Surcharge Order, Omni only goes so far to suggest that "some form of alternative dispute resolution could be helpful, such as designating the General Counsel or another hearing officer to mediate the dispute." Omni Mount Washington Hotel, LLC, Objection to Motion to Bifurcate at 1, September 23, 2019. Thus, its claim the Commission deprived Omni of a hearing is meritless. Omni had ample opportunity to respond to Staff's recommendation and was not deprived from either requesting a hearing or inquiring of Staff's recommendation.

Omni certainly cannot claim that it lacked notice of a possible allocation of rate case expenses varying from a meter-based approach. Staff's recommendation contained a usage-based approach, to which Omni vigorously disagreed, which proposed an 82 percent allocation of rate case expenses to Omni. Omni, again, cannot claim that the Commission's decision to authorize a method different from the meter-based approach was unanticipated, as it cannot

claim that the possibility of a greater allocation of rate case expenses was not under consideration with the Commission.

Lastly, Omni accuses Staff of exceeding "the boundaries of the audit function" and "proposed a wholly new and unanticipated approach to allocating rate case expenses for a water company rate case." Motion at 8. Omni provides no authority to support that accusation, as no statutory authority exists. N.H. Code Admin. Rules Puc. 102.21 defines Staff as "employees of the commission other than the commissioners." As employees of the Commission, Staff assists in the Commission's duty to act as arbiter between the interests of the regulated utilities and the consumer. RSA 363:17-a. Explicit in Omni's claim is that Staff's sole function is auditor, in rate case proceedings or otherwise. That is patently untrue. If taken as correct, rate cases would be dictated by utilities, and granted rate increases as long as the submitted documentation passed Staff's audit. As no limitation on Staff's duties exists in assisting the Commission, other than designation as a staff advocate, Staff did not exceed any such authority. RSA 365:35.

As Omni was provided ample opportunity to object to Staff's recommendation, and were noticed that an alternative to meter-based allocation was under the Commission's consideration, by way of Staff's recommendation, the Commission did not violate Omni's due process rights. As such, the Commission's allocation of rate case expenses was lawful and reasonable.

B. <u>The Commission Should Not Grant Rehearing as to Omni's New Proposal of Allocating Its Rate Case Expenses By the Same Percentage It Pays In Abenaki's Fixed Cost Revenues As It Could Have Been Presented in the Underlying Proceeding</u>

In its Motion, Omni proposes a different allocation of rate case expenses for the Commission to consider. Motion at 5. Omni bases the allocation of rate case expenses among the customer classes by the percentage each class pays of the total amount of fixed-charge revenue Abenaki receives.

Good reason to grant rehearing may be shown by identifying new evidence that could not have been presented in the underlying proceeding. *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977). As described above, the Commission afforded Omni with ample time to respond to Staff's usage-based approach. Omni could have easily proposed that allocation before the Commission issued its order. Therefore, good reason for rehearing cannot be based solely on the proposal contained in the Motion.

C. Omni's Additional Responses and Comments Should Not Be Considered as They are Inapplicable to a Request for Rehearing

At the end of the Motion, Omni tacks on its response regarding the $26,369 in contested rate case expenses addressed in the Surcharge Order, and comments on a distinct Commission order, *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,300 (October 23, 2019). First, Omni's statements to any issue outside of the Surcharge Order should be disregarded as it is outside the scope of the request for rehearing. Second, Omni's comments regarding the remaining, and contested, rate case expenses, should not influence the Commission's decision for rehearing as that matter is still pending. As such, neither portion of the Motion should be given weight by the Commission in its determination of the Motion for Rehearing.

IV. CONCLUSION

For the reasons stated above, the Commission did not overlook or misconceive and material matters before it. Therefore, the Surcharge Order is not unlawful or unreasonable. The Commission, furthermore, did not violate Omni's right to due process.

The Commission should not grant rehearing as the Motion fails to show good cause for such relief, nor does it present any new evidence requiring a rehearing that could not have been presented in the underlying proceeding. As such, the Motion should be denied.

WHEREFORE, for the reasons set forth hereinabove, Staff respectfully requests that the Commission:

1. Deny Omni's Motion for Rehearing; and
2. Grant such further relief as is just, equitable and appropriate.

Respectfully submitted,

Staff of the Public Utilities Commission

By its Attorney,

Christopher R. Tuomala, #19600
21 South Fruit Street, Suite 10
Concord, NH 03301
(603) 271-6011
Christopher.R.Tuomala@puc.nh.gov

I hereby certify that, on November 7, 2019, a copy of this Objection has been hand delivered to the Commission and has been sent electronically to the Service list in this matter.

Christopher R. Tuomala