

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 19-065

TOWN OF HAMPTON

Complaint by Town of Hampton Against Aquarion Water Company

Order Denying Motion for Rehearing

ORDER NO. 26,287

August 14, 2019

This order denies the Motion for Rehearing of Order No. 26,263 filed by the Town of Hampton. The Commission finds that Hampton did not offer any new evidence or identify any error of law or matter overlooked by the Commission in its initial decision.

I. PROCEDURAL HISTORY

In Order No. 26,263 (June 24, 2019), the Commission dismissed the Town of Hampton's complaint against Aquarion Water Company of New Hampshire, Inc. (Aquarion or the Company). Hampton had lodged two complaints: (1) Aquarion was overearning; and (2) the Company failed to clear snow from the Town's fire hydrants. The Commission found there was no basis for the complainant's dispute and no need for an independent investigation.

The Town filed a timely Motion for Rehearing, to which Aquarion and the Office of the Consumer Advocate (OCA) objected. Additional procedural history is described in Order No. 26,263. 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 OF THE PARTIES

A. Hampton

Hampton made three arguments in its Motion for Rehearing. First, the Town argued that dismissal of the complaint regarding Aquarion's overearning was "unreasonable and unlawful" and "unconscionable," because the Commission's reliance on *PNE Energy Supply, LLC d/b/a Power New England*, Order No. 25,603 (December 13, 2013), was misplaced. The Town stated that dismissal "illegally and unreasonably cuts off access" to a hearing and investigation. Hampton ultimately argued that overearning by the Company should be investigated.

Second, Hampton contended that the Commission's interpretation of RSA 365:1 was "unreasonable and unconscionable." Hampton contended that the Commission's ruling to dismiss its complaint relating to snow removal from fire hydrants was "on the merits" rather than on the "well-established standard of review set forth ... for ruling on a Motion to Dismiss." The Town argued that the Commission should not have dismissed its complaint as Hampton's clearing of snow from fire hydrants requires the use of public funds for private purposes, violating the holding in *Clapp v. Jaffrey*, 97 N.H. 456 (1952).

Finally, the Town argued that the Town of North Hampton's motion for intervention should not have been deemed moot as North Hampton is similarly served by Aquarion and "suffers similar injuries."

B. Aquarion

Aquarion claimed that the Town merely repeated the allegations set forth in its original complaint and did not allege sufficient good reason for rehearing or reconsideration. The Company argued that Hampton's motion reasserted its prior arguments with a "request for a different outcome." The Company cited *Aquarion Water Company of New Hampshire, Inc.*,

Order No. 26,102 (February 2, 2018) (denying a previous motion for rehearing by Hampton in Docket No. DW 17-154), as an example of the “exact” situation faced by the Commission in the instant proceeding.

C. OCA

The OCA joined in the objection made by Aquarion. The OCA shares Hampton’s concern that Aquarion may be overearning, but noted that the lawful remedy would be the commencement of a full rate case, not the retroactive adjustment of rates. The OCA argued that Hampton’s complaint regarding the removal of snow from fire hydrants was also devoid of merit. Finally, the OCA voiced its concern about a scenario in which the Company would recover the cost of defending against “frivolous legal arguments” from ratepayers.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration 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), or 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. *Aquarion Water Company of New Hampshire, Inc.*, Order No. 26,102 at 3 (February 9, 2018).

We find that Hampton’s Motion for Rehearing does not meet the standard for rehearing. We agree with Aquarion that Hampton is doing little more than repeating the same arguments it made prior to the issuance of Order No. 26,263. Hampton has not offered any new evidence that was not available at the time of the initial decision.

The Town's argument that the Commission is misinterpreting its prior orders is incorrect. We understand that Hampton disagrees with our conclusions, but that alone is not sufficient to grant rehearing. We note that in Order No. 26,245 (May 2, 2019) we approved a settlement agreement to which Hampton was a signatory, requiring that Aquarion file a rate case in 2020.

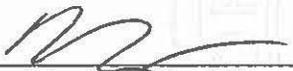
We find further that Hampton lacks standing to challenge our decision that North Hampton's petition to intervene is moot.

For the foregoing reasons, we deny Hampton's Motion for Rehearing.

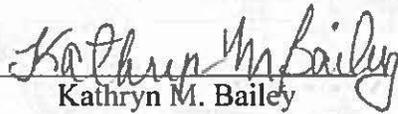
Based upon the foregoing, it is hereby

ORDERED, that the Motion for Rehearing by the Town of Hampton is hereby DENIED.

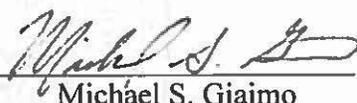
By order of the Public Utilities Commission of New Hampshire this fourteenth day of August, 2019.



Martin P. Honigberg
Chairman

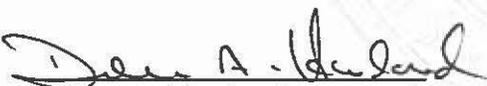


Kathryn M. Bailey
Commissioner



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