

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
2021 TERM
MARCH SESSION
CASE NO. 2019-0512
APPEAL OF TOWN OF HAMPTON

APPENDIX TO BRIEF OF APPELLEE AQUARION WATER COMPANY OF
NEW HAMPSHIRE, INC.

(On Town of Hampton's Rule 10 Appeal from Decisions of the
Public Utilities Commission)

Submitted by:

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**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

DW 18-161

**PETITION FOR APPROVAL OF 2019 WATER INFRASTRUCTURE AND
CONSERVATION ADJUSTMENT SURCHARGE AND PROPOSED PROJECTS**

DW 18-054

**INVESTIGATION TO DETERMINE RATE EFFECTS OF FEDERAL AND STATE
CORPORATE TAX REDUCTION**

SETTLEMENT AGREEMENT

This settlement agreement (Agreement) is entered into this 15TH day of April, 2019, by and among the Staff of the New Hampshire Public Utilities Commission (Staff), Aquarion Water Company of New Hampshire, Inc. (Aquarion), and the Town of Hampton (Hampton) (collectively, the Settling Parties).

I. PROCEDURAL HISTORY

Aquarion, is a regulated public utility as defined by RSA 362:2 and RSA 362:4. Aquarion provides water service to approximately 9,000 customers in the Towns of Hampton, North Hampton, and Rye. In Docket No. DW 08-098, the Commission approved a pilot Water Infrastructure and Conservation Adjustment Program (WICA) intended to accelerate the replacement of aging infrastructure and allow Aquarion to recover the fixed costs of non-revenue producing capital improvements completed and placed in service through surcharges on customers' bills following approval by the Commission. *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,019 (September 25, 2009). The WICA program was extended

and modified in Aquarion's last rate case. *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,539 (June 28, 2013) in Docket No. DW 12-085.

On October 16, 2018, Aquarion filed a petition for approval of its 2019 WICA surcharge associated with its 2018 WICA capital project (previously approved in *Aquarion Water Company of New Hampshire, Inc.*, Order No. 26,094 (December 29, 2017)), approval of its 2019 capital projects, and approval of its 2020 capital projects on a preliminary basis. The 2021 capital projects were submitted for informational purposes. Aquarion supported its petition and request for relief with the pre-filed testimony of Carl McMorran, its Operations Manager, and Debra Szabo, Director of Rates and Regulation for Aquarion Water Company of Connecticut, Inc., an affiliate of Aquarion.

The cost of the 2018 capital project, as updated during discovery, totals \$1,045,248. Aquarion requested recovery of that cost in its 2019 WICA surcharge, which covers capital projects spanning from 2013 through 2018. Aquarion requested the 2019 surcharge be effective January 1, 2019.

In Docket No. IR 18-001, the Commission opened an investigation into utility treatment of the effects of the federal corporate income tax rate reduction resulting from the 2017 Tax Cuts and Jobs Act as well as reductions in the NH Business Profits Tax (BPT) and the NH Business Enterprise Tax (BET). The Commission requested responses from utilities, including Aquarion. Aquarion's response was received and docketed as DW 18-054. In its response, Aquarion requested that the Commission allow it to credit recent tax reductions resulting from the 2017 Tax Cuts and Jobs Act against the increase in the WICA surcharge. As such, Aquarion proposed a 2019 WICA surcharge of 4.43%.

On November 9, 2018, the Commission issued an Order of Notice scheduling a prehearing conference and technical session for December 3, 2018. On November 14, 2018, the Town of Hampton petitioned to intervene. The Commission granted Hampton's intervention request at the prehearing conference. Staff and the parties agreed to a procedural schedule to govern the remainder of the proceeding and filed the proposed schedule with the Commission for approval. On January 10, 2019, the Commission approved the procedural schedule.

The Commission's Audit Staff reviewed and verified the costs associated with Aquarion's proposed 2018 WICA project and issued a report dated November 16, 2018. (Attachment A). Staff and the parties conducted discovery and held technical and settlement conferences pursuant to that schedule. Staff discovery also included an investigation and report by its consultant, Blue Ridge Consulting Services, Inc. (Blue Ridge), which reviewed the tax-change-effect calculations submitted by Aquarion in this docket. Blue Ridge issued a report, dated January 18, 2019, which contained findings and recommendations that informed Staff's position in settlement. (Attachment B). Aquarion does not agree with many statements and view-points expressed in that report, however, for purposes of completeness of the record, Aquarion will not object to the report being introduced into the record and being given the weight it deserves by the Commission.

This Agreement is the result of the discovery and meetings that occurred in this proceeding.

II. TERMS OF AGREEMENT

A. 2018 WICA Capital Project Associated with the 2019 WICA Surcharge

The Settling Parties agree and recommend that the Commission approve recovery of Aquarion's 2018 capital project up to the authorized annual revenue cap of 7.5% of Aquarion's annual retail water revenues from base rates, with a temporary adjustment for the remainder of

2019, pursuant to Section B below. This reflects an increase of .42 percent from Aquarion's previously approved 2018 WICA surcharge of 7.08% as approved in Order No. 26,094. That increase is associated with the Mill Road main replacement project. The Settling Parties agree and recommend that the Commission find that the 2018 Mill Road project is complete and that the associated plant is prudent, used and useful and in-service to customers, as detailed by Staff's engineer in its March 12, 2019, memo. (Attachment C). The Settling Parties represent that the Commission's Audit Staff has audited and verified Aquarion's costs for that project. (Attachment A).

B. 2019 and Subsequent WICA Surcharges

The Settling Parties agree and recommend that the Commission authorize Aquarion to recover its investment in the 2018 capital project pursuant to the terms of Aquarion's WICA tariff. The Settling Parties recognize that Aquarion's 2018 capital investment, if fully added to the WICA surcharge, would otherwise exceed the authorized annual revenue cap of 7.5% of Aquarion's annual retail water revenues from base rates. The Settling Parties therefore agree and recommend the Commission allow Aquarion recovery of its capital investments up to the 7.5% revenue cap, as calculated over a twelve-month period. This represents calculated annual projected revenues to be earned from the WICA surcharge of \$520,499. (Attachment D, Line 11).

The Settling Parties further agree that, for purposes of calculating the 2019 WICA surcharge, such calculation shall reflect a credit back to customers of \$44,302 based on a recalculation of Aquarion's 2018 WICA surcharge using federal and state income tax rates that were actually in effect during 2018. (Attachment E). Aquarion agrees to this credit for settlement purposes only and notes that the Commission authorized Aquarion to charge the 2018 WICA surcharge in Order No. 26,094. The Settling Parties also agree this temporarily reduces Aquarion's 2019 annual WICA surcharge to 6.86%, representing projected revenues of \$476,197 (\$520,499 - \$44,302), when calculated over a twelve-month period. (Attachment D, Line 13).

The Settling Parties further agree that during the first five months of 2019, Aquarion has and will continue to assess its customers a WICA surcharge of 7.08%, approved in Order No. 26,094, resulting in estimated revenues from the WICA of \$195,010. Therefore, the Settling Parties agree that the WICA revenue requirement for the remaining seven months of 2019 is \$281,187 (\$476,197 - \$195,010). As such, the Settling Parties further agree and recommend that, to recover this remaining amount for 2019, the Commission approve a temporarily effective WICA surcharge of 6.72% for the period from June 1, 2019 to December 31, 2019. (Attachment D, Line 15).

The Settling Parties agree that, as part of Aquarion's next rate proceeding, the Company shall provide a reconciliation between the WICA revenues it actually billed during 2019 and the WICA surcharges that would have been billed during 2019 by applying the 6.86% 12-month percentage to its full year base revenues. The Settling Parties further agree that any difference shall be a reconciling item to be considered in the determination of Aquarion's authorized revenue requirement in its next rate proceeding.

The Settling Parties further agree, that effective January 1, 2020, Aquarion's annual WICA surcharge will no longer be temporarily 6.72%, and instead shall resume to the agreed-upon 7.50% surcharge, until the resolution of Aquarion's next general rate proceeding.

The Settling Parties agree that a typical residential customer of Aquarion using 53,300 gallons of water per year currently pays \$42.53 per month under existing base rates. Based on that, the currently effective WICA of 7.08% results in a \$3.01 ($\$42.53 \times 7.08\%$) additional surcharge and a total monthly bill of \$45.54 ($\$42.53 + \3.01). The proposed temporary WICA of 6.72% will result in a \$2.86 ($\$42.53 \times 6.72\%$) additional surcharge and a total monthly bill of \$45.39 ($\$42.53 + \2.86), or a \$0.15 decrease, from June 1 through December 31, 2019. The proposed WICA of 7.50% will result in a \$3.19 ($\$42.53 \times 7.50\%$) additional surcharge and a total monthly bill of \$45.72 ($\$42.53 + \3.19), or a \$0.33 subsequent increase, commencing January 1, 2020.

The Settling Parties agree and recommend that the Commission, pursuant to the Commission's statutory authority to set "just and reasonable" rates (RSAs 374:2, 378:7, 378:28) and its prior approval of the WICA mechanism in Order Nos. 25,019 and 25,539, should find the resulting temporary WICA surcharges of 6.72% effective from June 1 through December 31, 2019, and the permanent WICA surcharge of 7.50 %, effective January 1, 2020 through the resolution of Aquarion's next general rate proceeding, are just and reasonable pursuant to RSAs 374:2 and 378:7 and approve them as such.

C. Proposed WICA Projects for 2019 and 2020

The Settling Parties agree that the WICA projects proposed for 2019, presented for the Commission's review and final approval, and the projects proposed for 2020, presented for review and preliminary approval, need not be addressed by the Commission at this time.

The Settling Parties Agree that, for efficiency purposes, examination of these projects should be deferred to Aquarion's next general rate case.

D. Deferment of Filing for 2020 WICA Surcharge

The Settling Parties agree that Aquarion will not file for recovery of further WICA eligible projects until after its next general rate case, if continuation of the WICA program is approved by the Commission.

E. The WICA Mechanism's Status as a Pilot Program

The Settling Parties agree and recommend that, as part of Aquarion's next general rate proceeding, the Commission shall determine whether the WICA program should either be continued as a permanent rate recovery mechanism or should be discontinued. To that end, Aquarion's next general rate filing shall include testimony with regard to whether the WICA program is meeting the goals upon which it was established by the Commission in Order Nos.

25,019 and 25,539 and, based on such, whether it's status as a pilot program should be terminated or should be continued as a permanent program.

F. Updated WICA Schedules and Attachments

The Settling Parties agree that the following portions of Aquarion's October 16, 2018 WICA filing have been superseded and updated and are attached hereto:

- i) Attachment F-Revised CM-1 (Project List)
- ii) Attachment G-Revised DS-2 (Tariff)

G. Audit Issue #1 – Filing of E-22 Reports (Attachment A, Page 14)

Pursuant to N.H. Code Admin. Rule Puc 609.12, Aquarion agrees to file Form E-22, *Report of Proposed Expenditures for Additions, Extensions and Capital Improvements to Fixed Capital*, on a timely basis.

H. Audit Issue #2 – Classification of Hydrant and Service Assets (Attachment A, Page 15)

The Commission Audit Staff found that Aquarion includes, as part of the cost of main replacements, the costs of associated hydrant and service replacements. The Audit Staff recommended that the costs of hydrant and service replacements should be segregated from the cost of the main replacement and recorded in their own individual asset accounts. Aquarion disagrees with the Audit Staff's recommendation, citing the additional cost associated with making these separate entries. Aquarion further argued that because hydrant and service retirements are also recorded in its mains account, this mitigates any misstatement of the mains asset. The Settling Parties agree and recommend the Commission approve deferring this issue until Aquarion's next full rate case.

I. Audit Issue # 3 – WICA Tariff Correction (Attachment A, Page 16)

The Settling Parties recognize that changes approved to Aquarion's WICA tariff in Order No. 25,539 in Docket No. DW 12-085 were not included in Aquarion's instant WICA filing. The correct proposed tariff is attached and reflects the language approved by the Commission in Order No. 25,539 on tariff page 16 that "the first \$50,000 in costs related to the emergency/reactive replacement of services, valves, and hydrants in a given year's WICA filing shall not be eligible for recovery through the WICA surcharge." (Attachment G). The Settling Parties do not believe additional Commission approval is necessary for this paragraph.

J. Proposed Resolution of DW 18-054

Consistent with Commission Order No. 26,096, dated January 3, 2018, in Docket No. IR 18-001, the Settling Parties agree and recommend the Commission order Aquarion to create a regulatory liability, as of January 1, 2018, to account for the impact of federal and state statutory

tax rate reductions which (1) gave rise to an Excess Accumulated Deferred Income Tax (EADIT) liability owed to customers and (2) enabled the realization of significant annual tax expense savings.

- (1) EADIT. The Settling Parties agree and recommend that the Commission direct Aquarion to record a regulatory liability for EADIT totaling \$1,271,245. The Settling Parties further agree to resolve any amortization and credit of the EADIT to customers in the next general rate proceeding. The valuation of the individual EADIT components and agreed upon amortization periods are contained in Attachment H. The total tax effected amortization in the first year is approximately \$50,000.
- (2) Tax Expense Savings. The Settling Parties agree and recommend that the Commission direct Aquarion to record an annual and cumulative regulatory liability for tax savings realized through the effective date of approved permanent base rates in its next general rate proceeding. The Settling Parties agree and recommend the Commission approve an annual tax savings amount of \$293,317 (Attachment I, Schedule 2, Line 41): this results in a 2018 year-end balance of \$293,317, a 2019 year-end balance of \$586,634, and a 2020 year-end balance of \$879,951 (*estimated and if applicable*). The amount of \$293,317 was determined, in part, based on FERC Order No. 475, which employs a formula approach using data from Aquarion's most recent rate case (DW 12-085) to approximate the cost of service impact (as if the new tax rates were in effect at the time of the last rate order). (Attachment I).

The Settling Parties further agree and recommend that the Commission approve deferring resolution of the tax expense savings component under subpart (2) until Aquarion's next rate case.

As such, the Settling Parties agree and recommend that the above-mentioned terms provide a satisfactory and full resolution of the issues contained in DW 18-054. The Settling Parties, furthermore, agree and recommend that the Commission approve the above-mentioned terms and consequently close Docket No. DW 18-054.

K. Aquarion Rate Case Filing in 2020

The Settling Parties agree and recommend the Commission order Aquarion to file a full, general rate case no later than 2020, using the prior year as a test year.

The Settling Parties also agree that Aquarion will conduct a cost of service study in this rate case, pursuant to the Partial Settlement Agreement approved in Order No. 25,539.

The Settling Parties also recognize that Hampton requested that Aquarion include the estimated cost of snow removal from Aquarion-owned fire hydrants at Aquarion's expense in the cost of service study. Aquarion disagrees that snow removal costs are appropriate costs to

include in a cost of service study. The Settling Parties agree that nothing in this Agreement prohibits Hampton from raising the issue in later proceedings, including but not limited to the Complaint already filed in DW 19-065.

L. Recovery of Staff Expert Fees in Next Rate Case

The Commission Staff incurred expenses associated with Blue Ridge's review of the impact of the corporate income tax rate reductions on Aquarion's revenues resulting from the 2017 Tax Cuts and Jobs Act as well as those instituted by the State of New Hampshire. The Settling Parties agree and recommend that Aquarion pay the consultant fees immediately upon demand, pursuant to RSA 365:37. The Settling parties further agree and recommend that the Commission order Aquarion to record these expenses as a deferred regulatory asset and thereby defer resolution of recovery of these expenses to Aquarion's next full rate case.

III. CONDITIONS

This Agreement shall not be deemed in any respect to constitute an admission by any Settling Party that any allegation or contention in these proceedings is true or valid. This Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept this Agreement in its entirety, without change or condition, the Agreement shall, at a Settling Parties' option, exercised within ten days of such Commission order, be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

The Commission's acceptance of this Agreement shall not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the provisions set forth herein in their totality are consistent with the public interest under the circumstances. The Settling Parties agree that all pre-filed testimony should be admitted as full exhibits for the purpose of consideration of this Agreement. Consent to admit all pre-filed testimony without challenge, however, does not constitute agreement by any Settling Party that the content of the pre-filed testimony filed by another party

is accurate or what weight, if any, should be given to the views of any witness. In addition, the identification of the resolution of any specific issue in this Agreement does not indicate the Settling Parties' agreement to such resolution in any future proceeding.

The Commission's approval of the recommendations in this Agreement shall not constitute a determination or precedent with regard to any specific adjustments, but rather shall constitute only a determination that the rates resulting from this Agreement are consistent with the public interest for purposes of this proceeding.

The discussions that produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise. Specifically, this Agreement is without prejudice to the Town of Hampton's positions expressed at the Prehearing Conference held on December 3, 2018 in this matter, or the Town's ability to raise said positions in later proceedings, including but not limited to the Complaint already filed in DW 19-065.

IN WITNESS WHEREOF, the Settling Parties have caused the Agreement to be duly
signed in their respective names by their fully authorized agents.

Staff of the N.H. Public Utilities Commission

Date: April 15, 2019


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**Aquarion Water Company of
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By its Attorney,


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Date: April 15, 2019

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Town of Hampton

Date: April 15, 2019

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- (3) The meter manufacturer, manufacturer's number, company number, type, size;
- (4) The percent of registration that are fast and percent of registration that are slow;
- (5) If a bill adjustment occurs, the amount refunded or collected and the period covered by the bill adjustment; and
- (6) The signature, full name and title of the utility employee who supervised the preparation of the report.

Source. (See Revision Note at Chapter heading Puc 600)
#6475, eff 3-25-97; ss and moved by #8311, eff 3-25-05
(from Puc 609.10); ss by #10407, eff 9-10-13

Puc 609.10 E-17 Annual Report of Hydrant Inspection.

- (a) Each utility shall file form E-17 describing its inspections of hydrants on an annual basis.
- (b) A utility shall include on form E-17 a caption identifying the report as "E-17 Annual Report of Hydrant Inspection" and the following:
 - (1) The name of the company and the year of the report;
 - (2) The number of hydrants maintained, number of hydrants inspected and flushed, and number of hydrants found defective;
 - (3) A breakdown of defective hydrants as follows:
 - a. The date, location, date of last inspection;
 - b. The nature of the defect, the cause of the defect; and
 - c. The corrective steps taken; and
 - (4) The signature, full name and title of the utility employee who supervised the preparation of the report.

Source. (See Revision Note at Chapter heading Puc 600)
#6475, eff 3-25-97; ss and moved by #8311, eff 3-25-05
(from Puc 609.11); ss by #10407, eff 9-10-13

Puc 609.11 E-18 Report of Interruptions of Service Over 30 Minutes Duration.

- (a) Each utility shall file Form E-18 on a monthly basis summarizing interruptions to service of over 30 minutes duration, if any occur.
- (b) A utility shall include on form E-18 a caption identifying the report as "E-18 Report of Interruptions of Service Over 30 Minutes Duration" and the following:
 - (1) The name of the company and the month reported;
 - (2) The date, time and duration of interruption;
 - (3) The location and number of customers affected;