

Bond Case Briefs

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UTILITIES - NEW HAMPSHIRE

Appeal of Lakes Region Water Company, Inc. (New Hampshire Public Utilities Commission)

Supreme Court of New Hampshire - November 28, 2018 - A.3d - 2018 WL 6186133

Water utility appealed an order of Public Utilities Commission, which required utility to refund a second base charge it had imposed on customer and prohibited it from imposing such charges unless and until they were included in utility's tariff.

The Supreme Court of New Hampshire held that:

- Utility could not charge customer second base rate;
- Utility's second charge was a violation of law;
- Commission was not required to explain why utility's contrary arguments were unpersuasive; and
- Utility had notice that Commission would decide issue of whether utility could require customer to install separate service.

Water utility could not unilaterally adjust its charges and charge customer second base rate, after customer tapped into primary residence's service connection to supply water to newly constructed garage with bunkhouse; utility's remedy for its claim that customer's action resulted in free or discounted service was to propose revisions to its tariff, rather than to charge fee to customer different from rates scheduled in its tariff, and individual, rather than physical structures, was "customer" under utility's tariff as written, such that connecting bunkhouse to water line did not service second customer.

Water utility charging customer second base rate, after customer tapped into primary residence's service connection to supply water to newly constructed garage with bunkhouse, was a violation of law, which met customer's burden of proof in complaint before Public Utilities Commission, despite contention that such charge was, at most, unauthorized by utility's tariff; second base rate was not in utility's tariff, and deviation from tariffed rate was violation of law.

Public Utilities Commission, in concluding that water utility was unable to charge customer second base rate for customer's newly constructed garage and bunkhouse, was not required to explain why utility's contrary arguments were unpersuasive; Commission's essential finding of fact was that utility's tariff did not specifically address situation presented, which was sufficient to support legal ruling that there was no basis for utility to require second base charge under terms of tariff.

Water utility had notice that Public Utilities Commission would decide issue of whether utility could require customer to install separate service to his newly constructed garage with bunkhouse, and thus Commission did not err in failing to reconsider issue; Commission notified parties by letter that, because its rules did not specifically address situation, Commission believed that hearing would be useful in determining whether separate base charge should be implemented "and/or a separate meter installed," and in an order Commission noted that thrust of customer's complaint was that utility was not permitted to charge him separate base charge "and/or install a separate meter" under

terms of utility's tariff.