

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 21-090

ABENAKI WATER COMPANY, INC. AND AQUARION COMPANY

**Petition for Approval of the Acquisition of
Abenaki Water Company, Inc. by Aquarion Company**

Determination of Public Interest Under RSA 374:33

ORDER NO. 26,549

November 12, 2021

In this order, the Commission finds, pursuant to RSA 374:33, that the acquisition of Abenaki Water Company, Inc. by Aquarion Company is lawful, proper, and in the public interest and approves the Settlement Agreement filed by the Parties.

I. PROCEDURAL HISTORY

On April 30, 2021, Aquarion Company (Aquarion) and Abenaki Water Company, Inc. (Abenaki) (together Joint Petitioners) filed a joint petition requesting approval of the acquisition of Abenaki by Aquarion (Acquisition). On May 10, 2021, the Joint Petitioners filed supplemental attachments to their joint petition.

The Office of the Consumer Advocate (OCA) noted its participation by letter filed with the Commission on May 3, 2021. Numerous Abenaki customers in the Bow and Tioga Belmont water systems requested intervention (Customer Intervenors). Omni Mount Washington (Omni) and the Bretton Woods Homeowners Association (Bretton Woods) also requested intervention.

Following the prehearing conference, the Commission granted all interventions, determined the 60-day deadline for a preliminary finding on adverse effect under RSA 369:8, II (b)(3) and (4) would begin at the earliest on May 10, 2021, and requested that the parties brief legal issues concerning the standard of review to be used under

RSA 369:8. The Joint Petitioners and the OCA filed briefs and reply briefs on June 9, and June 16, 2021, respectively.

Evidentiary hearings were held on June 28 and 29, 2021. On July 1, 2021, the Joint Petitioners filed a request to extend the 60-day deadline for a preliminary determination for 30 days. On July 9, 2021, the Commission issued Order No. 26,497 granting the requested 30-day extension until August 8, 2021.

On August 6, 2021, the Commission issued Order No. 26,506, in which it made a preliminary determination that the proposed acquisition would have an adverse effect on rates pursuant to RSA 369:8, II(b)(3). The Joint Petitioners filed an amended statement and accompanying testimony on August 20, 2021 (Amended Statement). On August 27, 2021, the Customer Intervenors and the OCA each filed a reply to the Amended Statement. Omni filed a response to the Amended Statement on August 30, 2021, and a supplemental response on September 3, 2021. Bretton Woods filed a response to the Amended Statement on September 10, 2021.

On September 17, 2021, the Commission issued Order No. 26,519, in which it found that the proposed acquisition would have an adverse effect on rates and announced that it would review the transaction pursuant to RSA 374:33. On October 8, 2021, the Joint Petitioners filed supplemental testimony and attachments (Supplemental Testimony) in support of a determination that the proposed transaction is lawful, proper, and in the public interest pursuant to RSA 374:33.

On October 14, 2021, the Commission issued a procedural order taking administrative notice of parts of Docket Nos. DW 20-112 (Abenaki Rate Case) and IR 21-024 (Investigation and Report on Abenaki-Rosebrook System). On November 9,

2021, the Joint Petitioners filed a Settlement Agreement (Settlement) signed by most of the parties.¹ A hearing was held on the Settlement on November 10, 2021.²

II. BACKGROUND

On April 7, 2021, Abenaki's parent company, New England Service Company (NESC), and Aquarion entered into an Agreement and Plan of Merger by which Aquarion would acquire NESC through a merger all of the issued and outstanding common stock of NESC, with NESC becoming a wholly owned direct subsidiary of Aquarion. The Acquisition would result in Aquarion having ownership and control of NESC and its subsidiaries, including Abenaki, which would become a wholly owned indirect subsidiary of Aquarion.

Aquarion will have a different post-acquisition structure in New Hampshire than in the other states. Specifically, Aquarion Water Company of New Hampshire, Inc. (AWC-NH) would be a separate legal entity from Abenaki Water Company in New Hampshire, while in Connecticut and Massachusetts, the Aquarion and Abenaki legal entities will be combined.

III. POSITIONS OF THE PARTIES

A. Joint Petitioners

In Supplemental Testimony filed on October 8, 2021, the Joint Petitioners incorporated the arguments made in their Amended Statement filed on August 20, 2021. The Joint Petitioners disputed the Commission's conclusion that the proposed

¹ A number of customer intervenors were admitted as parties and agreed to have representatives act on their behalf during the proceedings in this docket. Several of those customer representatives signed the Settlement and thus, the Commission treats those signatures as representing agreement by the individual customer intervenors. Further, no customer intervenor objected to the Settlement.

² For more detail on the earlier procedural history in this docket, please refer to Order No. 26,506 (August 6, 2021) and Order No. 26,519 (September 17, 2021).

carry forward of existing Abenaki rate base for purposes of the transaction does not take into account the impaired state of the rate base assets. Order No. 26,506 at 10. They argued that once the costs of assets are included in rate base, recovery is not reduced due to the condition of the assets, unless and until the assets are deemed to no longer be used and useful to customers. The Joint Petitioners averred that, in the absence of the Acquisition, there would be continued recovery of the cost of rate base assets. They asserted that all assets have been properly maintained and managed, so that no reduction in rate base is currently allowed or appropriate.

In the Amended Statement, the Joint Petitioners stated that, as of December 31, 2020, Abenaki had net utility plant in service of approximately \$1.87 million across its New Hampshire systems, as shown on its year-end 2020 books and records. They argued that the Acquisition will not change the valuation of the Abenaki rate base. Finally, they reiterated earlier claims that the transaction would not have any adverse effect on rates.³

According to the Supplemental Testimony, the proposed indirect Acquisition of Abenaki by Aquarion will not have an adverse effect on rates. The testimony denied that the rate base assets were impaired. To the contrary, the Joint Petitioners claimed that the Abenaki water system and its customers will benefit from ownership by a larger, experienced operator with greater financial resources and a depth of expertise to enhance the reliability of the system and manage the system into the future.

³ For a description of the earlier arguments by parties in this docket concerning the adverse impact of this transaction, please refer to Order No. 26,506 (August 6, 2021) and Order No. 26,519 (September 17, 2021).

The Joint Petitioners asserted that the public interest standard involves a “no net harm” test. *See Aquarion Water Co. of N.H.*, Order No. 24,691 at 7 (October 31, 2006).

The Supplemental Testimony describes several rate commitments and mitigation measures that the Aquarion offered to address the concerns stated in the Order No. 26,519. First, if the transaction is approved, Aquarion committed to an unconditional withdrawal of the pending Abenaki rate case, and to freezing base rates for all of the Abenaki water systems at least through December 31, 2022. The Joint Petitioners estimate that the effect of the rate case withdrawal and rate freeze is that customers will avoid the increase for at least two years, which translates into a minimum benefit of approximately \$126,000 (\$63,000 per year for 2 years).

Second, Aquarion will renew its commitment that the next rate case filing for the Belmont, Bow, Tioga Gilford, Tioga Belmont and/or Rosebrook water systems and the Belmont sewer system will be based on a test year with at least 12 months of actual cost data, on a calendar year basis, under Aquarion ownership.

Third, Aquarion committed that no future rate case filing for the Belmont, Bow, Tioga Gilford, and/or Tioga Belmont water systems, or the Belmont sewer system, will seek recovery of rate-case expenses from the Abenaki rate case in Docket No. DW 20-112, once the rate case is withdrawn. It stated that rate case costs for Docket No. DW 20-112 are approximately \$90,000.

Finally, Aquarion committed that the next rate case filing for AWC-NH (i.e., the rate case following AWC-NH’s currently pending rate case in Docket No. DW 20-184), will include an analysis regarding the potential future merger of Abenaki and AWC-NH, if the Abenaki systems became operating divisions of AWC-NH.

B. OCA, Omni, Bretton Woods, and Department of Energy

These parties signed the Settlement and supported it at hearing on November 10, 2021.

C. Customer Intervenors

Seven of the Customer Intervenors signed the Settlement, one of whom signed individually and also on behalf of Village Shores Estates in Bow, New Hampshire. No other Customer Intervenor, objected to the Settlement.

IV. SETTLEMENT AGREEMENT⁴**A. Rates**

The Settlement Agreement provides that Abenaki customers shall remain on current rate schedules, subject to current terms and conditions unless and until a base-rate change is approved by the Commission in a future rate case. Further, Abenaki's pending rate case in Docket No. DW 20-112 shall be withdrawn unconditionally, and without prejudice, upon Commission approval of this Settlement Agreement and closing of the proposed Acquisition. No future rate case filing for the Belmont, Bow, Tioga Gilford, and/or Tioga Belmont water systems, and/or the Belmont sewer system, shall seek recovery of Abenaki's rate-case expenses from Docket No. DW 20-112 once that rate case is withdrawn.

In the Settlement Agreement, Aquarion agreed to delay filing for a temporary or permanent change in base rates for all of the Abenaki systems at least through April 30, 2023. The next rate case filing for the Belmont, Bow, Tioga Gilford, Tioga Belmont and/or Rosebrook water systems, and/or the Belmont sewer system, shall be based on a test year with at least 12 months actual cost data – on a calendar year basis –

⁴ This is a summary of pertinent terms of the Settlement Agreement. For a complete copy see Exhibit 36 in this docket.

under Aquarion ownership. At such time as Aquarion files the next rate case involving any of the Abenaki systems, Aquarion shall provide all intervenors in both DW 20-112 and DW 21-090 with notice of such filings via the e-mail addresses in the Commission's service lists in those dockets.

B. Local Offices and Operations

The Settlement Agreement provides that Aquarion shall retain the NESCE employees currently supporting the Abenaki system and employ them as direct employees of Abenaki. Following closing, Abenaki operations shall continue to be based from the New Hampshire office in Gilford, New Hampshire. Three employees shall be based in the Gilford office, supported by additional personnel in Aquarion's offices in Hampton, New Hampshire and Connecticut. Aquarion shall provide contact information for these offices to Abenaki's customers upon closing. Abenaki shall maintain an adequate inventory of parts and equipment needed for system repairs.

C. Acquisition Premium

Pursuant to the Settlement Agreement, Aquarion shall not seek recovery of any acquisition premium associated with the Proposed Transaction.

D. Transaction Costs

The Settlement Agreement provides that approval of the Proposed Transaction by the Commission shall not constitute pre-approval of transaction costs. Aquarion may seek to recover transaction costs only to the extent of quantifiable merger savings as shown in a future rate case. Any transaction costs shall be recovered from net savings.

E. Operating Company Integration

Pursuant to the Settlement Agreement, no less than 60 days in advance of the next rate case for either Abenaki or Aquarion Water Company of New Hampshire

(“AWC-NH”), Aquarion shall develop and distribute: an assessment of the integration of Abenaki into the Aquarion organization; an examination of merging the Abenaki and AWC-NH corporate entities, including post-merger rate structures; and a timeline to implement such merger. Aquarion shall circulate that document to the service list in Docket No. DW 21-090 via e-mail. This analysis shall include a listing of the advantages/disadvantages of any future consolidated rates proposed by Aquarion.

The “next rate case” as relating to AWC-NH will not be filed prior to 12 months of Aquarion ownership of Abenaki. If no rate case is filed by AWC-NH or Abenaki before January 1, 2024, the assessment shall be developed and circulated as agreed no later than January 15, 2024. If a merger of the corporate entities is not warranted or achievable at that time, the report shall discuss other options for capturing the benefits of common ownership of the two New Hampshire operating companies and providing those benefits to the customers of those companies.

When either AWC-NH or Abenaki subsequently files its next rate proceeding, the respective utility shall include with its rate filing either a petition for Commission approval to merge the corporate structures of Abenaki with Aquarion, or detailed testimony as to why continuation of the two utilities as separate entities is beneficial to their respective customers.

F. Rosebrook Safety Investigation Report

The Joint Petitioners made numerous commitments to address safety concerns in Appendix 1 to the Settlement Agreement.

G. Bow and Tioga Belmont Systems

In relation to the Bow (Village Shore Estates) and Tioga Belmont systems and the specific concerns regarding those systems, the Joint Petitioners committed to several items specified in Appendix 2 to the Settlement Agreement.

H. Reporting

Pursuant to the Settlement Agreement, every six months, Aquarion shall provide an update of planned and completed capital improvements, as outlined in the October 7, 2021, Abenaki Report of System Assets in DW 20-112, including capital improvements in the Rosebrook System.

On an annual basis, Aquarion/Abenaki agreed to conduct an open meeting for the residents of Bow (Village Shore Estates) and Tioga Belmont to foster open communication among the company and its customers.

V. COMMISSION ANALYSIS

Unless precluded by law, informal disposition by stipulation may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation “if it determines that the result is just and reasonable and serves the public interest.” Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Pennichuck Water Works*, Order No. 26,070 at 14 (November 7, 2017).

In this case the Settlement was filed on November 9, 2021, the day before hearing. Although Puc 203.20(e) requires that settlements be filed no less than five days prior to the hearing, Puc 203.20(f) allows the Commission to accept late-filed settlements when acceptance promotes the orderly and efficient conduct of the proceeding and will not impair the rights of any party. In this case, we find that accepting the late-filed settlement promotes the orderly and efficient conduct of the proceeding. No parties objected to the Settlement Agreement or its’ late-filing.

Therefore, we also find that its acceptance will not impair the rights of any party. Thus we accept the late-filed Settlement consistent with Puc 203.20(f).

We review the Settlement to determine whether its terms are just, reasonable and serve the public interest, and we also consider whether the proposed Acquisition of the Abenaki water systems in New Hampshire is lawful, proper and in the public interest, as required by RSA 374:33. RSA 374:33 provides, in part, that

No public utility or public utility holding company as defined in section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C. section 78-P, whichever is less, of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless the commission finds that such acquisition is lawful, proper, and in the public interest

The Commission has interpreted the public interest standard to involve a consideration of the positive and negative aspects of a proposed acquisition to determine whether, on balance, the transaction is consistent with the public interest.

Hampton Water Works, Inc., Order No. 23,924 at 12, 14 (March 1, 2002); *New England Elec. Sys.*, Order No. 23,308 at 15-16 (October 4, 1999); *Re Consumers N.H. Water Co.*, Order No. 22,792, 82 NH PUC 814, 816-17 (November 21, 1997); *Re Eastern Utilities Associates*, Order No. 20,094, 76 NH PUC 236 (April 1, 1991).

The New Hampshire Supreme Court has accorded the Commission considerable discretion in its application of the public interest standard.

The analogous phrase “public good” has been given a broad definition by this court and has been held not only to include the needs of particular persons directly affected . . . but also . . . the needs of the public at large and the general welfare of the utility involved. In the application of the general criteria provided by the statute the commission has broad discretion and (t)his case, with its variety of conflicting considerations, is an excellent example of why the prime responsibility for determining the public interest is with a specialized agency and not with the courts.

Waste Control Sys., Inc. v. State, 114 N.H. 21, 24 (1974) (citations omitted).

We have already found that Aquarion brings some benefits to the Abenaki water systems through its proposed Acquisition. “Aquarion, through its current ownership of New Hampshire utilities, has demonstrated its managerial, financial, and technical capabilities to operate a utility in New Hampshire. Aquarion’s superior financial resources will be useful to the Abenaki water companies.” Order No. 26,506 (August 6, 2021) at 11. We also previously noted concerns with the quality and operation of the Abenaki systems as well as the likely rate impacts imposed by the capital improvements needed for those systems. *Id.* at 8-9. We now consider whether the Settlement addresses concerns raised in this docket with regard to rate impacts, operations, and the condition of the rate base assets, for the Abenaki systems.

Rate Impacts

The Settlement provides for withdrawal of the pending rate case and a rate freeze through April 30, 2023. It also requires that a future rate case for the Abenaki systems be based on 12 months of calendar year costs under Aquarion ownership and control. Further, the Settlement assures that no acquisition premium will be recovered, and only transactional costs that are offset by merger savings may be sought. When questioned at hearing on November 10, 2021, about the potential future rate impacts of capital additions made during the rate freeze period, the Aquarion witness replied that operational efficiencies should, to some degree, offset future rate increases. Additionally, Aquarion/Abenaki will credit \$280,000 to the cost of construction of the Rosebrook Pressure-Reduction Project. We agree that the Settlement provides immediate rate stability, an improved long-term outlook, brings operational expertise to Abenaki operations, and avoids rate increases during an initial period while Aquarion resolves any operational redundancies.

In the long run, integrating the Abenaki systems into the Aquarion systems in New Hampshire, including a consolidation of rates, will provide much needed financial support for the Abenaki systems and should mitigate future rate impacts. The Settlement's commitments to moving that process forward with a filing no later than January 15, 2024, addresses long term rate impact concerns for the Abenaki systems.

Operations

The Settlement assures that Aquarion will immediately oversee operations of the Abenaki water systems, bringing the demonstrated managerial, financial, and technical capabilities of Aquarion to Abenaki operations. In addition, Aquarion's superior financial resources will be useful to the Abenaki water companies. Further, Aquarion will maintain a local presence in the Gilford, New Hampshire office, with three employees based there.

In the long-term, the Settlement commits to a plan for operational integration of Aquarion and Abenaki, to be filed 60 days before the next Abenaki rate case, or at the latest January 15, 2024. In addition, Aquarion will implement numerous specific recommendations to improve operations at the Rosebrook system contained the Rosebrook Report, Exhibit 30 at pp 69-72, and makes similar commitments to improve operations for the other Abenaki systems. As a direct result of the Acquisition, these commitments to integrated and improved operations will address Commission concerns relative to the identified on-going operational deficiencies in the Abenaki systems.

Condition of Rate Base Assets

Abenaki's business was built on mergers and acquisitions of small water companies as illustrated below, Exhibit 33, page 7:

- Feb 2014 - Abenaki Water Company formed with the acquisition of the Lakeland Water, Lakeland Sewer, and White Rock systems from the White Rock Water Company (DW 13-236).
- Sep 2016 - Abenaki acquires Rosebrook Water System from the Rosebrook Water Company (DW 16-448).
- May 2019 - Abenaki acquires Tioga Belmont and Tioga Gilford Village systems from Tioga River Water Company (DW 18-108).
- Apr 2021 - Abenaki announces sale of Abenaki to Aquarion (DW 21-090).

The Department of Energy witness testified that the inventory assets for Rosebrook were not accurate, and in his experience these types of problems are not confined to one system. This calls into question the accuracy of the asset base, and thus the rate base of the Abenaki entities. The Commission agrees with the parties that the appropriate place for a thorough review of the assets is in the next rate case, where the Commission will require an asset-by-asset inventory, with supporting documentation for each asset's starting plant-in-service value, accumulated depreciation, and resulting book value.

The Settlement provides for reports on capital improvements on a six month basis on a system by system basis. These reports will be based upon the asset listing provided by Abenaki on October 7, 2021, and entered as Exhibit 33 in this docket. Exhibit 33 contains proposed 5 year capital improvement schedules. Additionally, some of the commitments made to recommendations in Exhibit 30, the Rosebrook Investigative Report involve capital improvements. These reports and the underlying commitments to system improvements should help to improve asset condition throughout the Abenaki systems. Importantly, with the withdrawal of the rate case in DW 20-112 as contemplated by the Settlement Agreement, the question of rate base and asset valuation remains an issue that can be thoroughly reviewed in the next rate case, providing further protection for the ratepayers.

Based upon the record in this case, and the commitments agreed to in the Settlement Agreement by the Joint Petitioners to address our earlier concerns, we find that the terms of the proposed Settlement are just, reasonable and in the public interest and we approve the Settlement. In reliance on the commitments made by the Joint Petitioners in the Settlement, we also find that the proposed Acquisition of Abenaki by Aquarion, as modified by the Settlement, is consistent with the public interest and we approve it.

As agreed to by Aquarion during the hearing, we require that any reports, information, policy and/or communication required by the terms of the Settlement to be made to any Party shall also simultaneously be filed with the Commission in this docket and in any related docket. We also reiterate that in any future rate case involving the Abenaki systems we will require an investigation of the condition of any assets included in rate base.

Based upon the foregoing, it is hereby

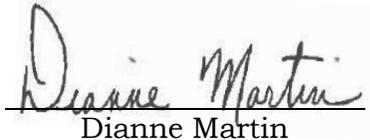
ORDERED, the Settlement Agreement is APPROVED as set forth herein above; and it is

FURTHER ORDERED, that Aquarion's indirect Acquisition of Abenaki is APPROVED; and it is

FURTHER ORDERED, that Aquarion shall advise the Commission by notice filed in this docket of the closing of the Acquisition; and it is

FURTHER ORDERED, that Aquarion shall file any reports, information, policy and/or communications required by the Settlement Agreement in this docket and any related docket.

By order of the Public Utilities Commission of New Hampshire this twelfth day
of November, 2021.

Handwritten signature of Dianne Martin in black ink, written over a light gray rectangular background.

Dianne Martin
Chairwoman

Handwritten signature of Daniel C. Goldner in black ink.

Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 21-090

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