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PUBLIC UTILITIES COMMISSION
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May 18, 2021

TO: Commissioners

FROM: David K. Wiesner, Hearings Examiner

RE: DW 21-090, Abenaki Water Company, Inc. and Aquarion Company, Petition for Approval of Acquisition of Abenaki Water Company by Aquarion Company

HEARINGS EXAMINER’S REPORT

At your request, I served as the presiding officer over the prehearing conference (PHC) held in the above-referenced matter on May 14, 2021.

On April 30, 2021, Abenaki Water Company, Inc. (Abenaki), and Aquarion Company (Aquarion) filed a joint verified petition pursuant to RSA 369:8 II and RSA 374:33 for approval of Aquarion’s indirect acquisition of Abenaki, or, alternatively, for a determination that Commission approval is not required. Pursuant to an Order of Notice issued on May 4, 2021, a PHC was scheduled for May 14, 2021. The Order of Notice directed that it be published by posting on the websites of Aquarion, Abenaki, and the Commission.

Appearances

Matthew Fossum, Esq., and Jessica Ralston, Esq., for Aquarion
Jennifer DiBella, Esq., for Abenaki
Thomas Getz, Esq., for Omni Mount Washington Hotel, LLC (Omni)
Paul Mueller, for Bretton Woods Property Owners Association (BWPOA)
Sharon Burgess, *pro se*
Donald M. Kreis, Esq., for Office of the Consumer Advocate (OCA)
Christopher Tuomala, Esq., and Anne Ross, Esq., for Commission Staff (Staff)

Intervention Requests

OCA participating pursuant to RSA 363:28, per a letter of participation filed on May 3, 2021. Intervention requested by Omni, BWPOA, Village Shore Estates Association, and a number of individual Abenaki ratepayers. Certain of the prospective intervenors have not yet filed written petitions to intervene, but will be asked to do so. No objections were made to any of the requested interventions. I encouraged the parties to consider collaboration among and more efficient organization of the intervenors, in the interest of streamlining the process, and

suggested as a potential model for such collaboration the approach adopted in the Abenaki rate case.

Notice Issue: The Consumer Advocate noted that the Order of Notice was only published through posting on the websites of the two companies and of the Commission. He argued that limited website publication provided insufficient notice that may be “infirm,” because it was not reasonably accessible to interested ratepayers, and he expressed the belief that the companies should have been required to provide more extensive notice through additional means. He reached out to customers participating in the Abenaki rate case and informed them of this docket and encouraged them to intervene, but he believes that more notice was necessary. Omni stated that the Order of Notice had not been posted on the Commission’s home page until May 10 and, as a result, it received only late notice of the deadline for intervention. I indicated my understanding that the Order of Notice had been posted on the Commission website in at least one location on the date it was issued, May 4. Staff attorney Anne Ross suggested that a supplemental notice could be sent to the service lists for both the Abenaki and Aquarion rate cases, providing an extended opportunity for intervention by interested persons. After some discussion, there was no objection to that approach, and I agreed to include it as a recommendation in my hearings examiner’s report to the Commission.

Filing Date Issue: Staff argued that the 60-day timeline provided for in RSA 369:8, II should not be deemed to have begun until May 10, 2021, at the earliest, because that was the date on which the joint petitioners filed a supplement containing disclosure schedules and other documentation regarding the proposed acquisition transaction. No objection to that proposed timing was raised by any party or prospective intervenor.

Positions of the Parties

Aquarion: Aquarion described the proposed acquisition transaction and the benefits it would provide to Abenaki customers. According to Aquarion, there would be no changes to Abenaki’s rates, term, service, or operations as a result of the acquisition. The transaction would not cause any net harm to Abenaki’s customers but would be beneficial because of Aquarion’s greater financial strength, operational experience, and technical capabilities and resources. The proposed acquisition would preserve local contacts where the acquiring company has significant ties to the state and current NESC employees, three of whom are based in the state, would be retained. The acquisition would also result in cost savings over time, including decreased administrative costs, directors’ fees, insurance costs, and lower borrowing costs. The transaction should involve a seamless transition in service for customers. Aquarion requested that the Commission either approve the proposed transaction or determine that approval is unnecessary due to the lack of any adverse effects on Abenaki’s rates, terms, service, or operations in the state, under RSA 369:8, II.

Abenaki: Abenaki expressed support for Aquarion’s initial statement and emphasized that the minimal changes resulting from the proposed acquisition would not result in any adverse impacts to Abenaki’s customers. The company’s rates would not change as a result of the acquisition and would remain the same until the separate rate case is concluded. Abenaki customers would benefit because Aquarion will be well-positioned to continue providing high quality service to

customers through a seamless transition in corporate ownership. Abenaki supported the request for Commission approval or a finding that approval is not required.

Intervenors: Three prospective intervenors appeared at the PHC: Omni, BWPOA, and Sharon Burgess. Each of those prospective intervenors made a brief initial statement of position:

BWPOA: On behalf of BWPOA, Mr. Mueller stated their primary interest is in other matters involving Abenaki's Rosebrook Division, including the water pressure issues noted by NHDES and rate and tariff filings, and the potential effect of the Aquarion acquisition on those matters.

Omni: Omni stated that it is generally supportive of the proposed acquisition because of the potential benefits resulting from ownership of Abenaki by a larger utility operating company. Omni is most interested in the customer impacts of the transaction and any potential adverse effects. Omni expressed willingness to coordinate with BWPOA to the extent of overlap in their interests as Abenaki Rosebrook customers.

Sharon Burgess: Ms. Burgess expressed concern about Abenaki rates and service, noting the pending rate case. She referenced current service quality issues which should be resolved to avoid harm to customers.

OCA: The OCA expressed the position that it would be inappropriate to avoid Commission scrutiny through approval of the acquisition based on a "no adverse effects" standard. He stated that the customer benefits and other rate and service impacts should be reviewed under the normal public interest standard. He noted the unique situation where an acquisition is proposed while a utility rate case is pending and stated that alone renders it improper to approve the transaction under the RSA 369:8, II standard. According to the OCA, the proposal should be reviewed not under the Commission's traditional "no net harm" standard, but under a more stringent "net benefits" standard. He argued that the Commission is not bound by its own precedent and the Supreme Court has not directly addressed the statutory standard applicable to utility mergers and acquisitions. He cited Commission Order No. 23,924 in *Hampton Water Works, Inc.* as an example of a decision clarifying that the "no net harm" standard does not represent a basis for approval without careful scrutiny of the potential impacts on utility customers. He also expressed concern that the Aquarion acquisition of Abenaki could result in customers having the "worst of both worlds" because Abenaki's small New Hampshire water systems would comprise such a minor part of the larger company's business that they may not receive priority attention within the corporate organization. Notwithstanding those concerns, the OCA stated willingness to work with the parties and Staff to investigate the proposed acquisition and ensure that it meets the applicable standards for Commission approval.

Staff: Staff stated that it had begun review and investigation of the proposed acquisition transaction and had concluded that the joint petition fails to demonstrate there would be no adverse effects on rates, terms, service, or operations as a result of the transaction. According to Staff, further proceedings are necessary to investigate the potential impacts of the acquisition, under RSA 369:8 and Commission precedent. Staff stated that precedent supports the view that mere representations are insufficient and independent verification of relevant factual matters is required. Staff also noted the unusual issues associated with an acquisition proposed to be

completed while the utility to be acquired is involved in a pending rate case. Staff indicated it would work with the parties to develop a schedule to evaluate the proposed acquisition and related impacts.

Public Comment: An opportunity for public comment was provided, but no public comments were made during the PHC.

Recommendations:

As hearings examiner, I recommend that the Commission approve the petitions to intervene filed by the prospective intervenors, including those who did not appear at or file a petition prior to the PHC, provided that those individuals or entities file a brief request for intervention stating they are ratepayers of the company and any other material basis for their interest in the proceeding.

I also recommend that, in light of the notice issues raised by the OCA and Omni, the Commission issue an additional Order of Notice that provides a limited period of time for interested parties to intervene, provide a copy of that Order of Notice to the service lists for both the Abenaki rate case, DW 20-112, and the Aquarion Water Company of New Hampshire rate case, DW 20-184, and require posting of the Order of Notice on the Commission's and the companies' websites.

I further recommend that the Commission determine that the 60-day timeline applicable under RSA 369:8, II be deemed to have begun on May 10, 2021, at the earliest, because that was the date on which the joint petitioners filed a supplement to their petition containing additional documentation relevant to the proposed acquisition.

Very truly yours,

David K. Wiesner

David K. Wiesner
Hearings Examiner