

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 14-075**

**AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.**

**Verified Petition to Credit Customers for Benefit Arising from Change in Tax  
Regulations**

**Order *Nisi* Approving a Three-Year Amortization Period  
and Granting Motion for Protective Order**

**O R D E R N O. 25,750**

**January 12, 2015**

In this Order *nisi*, the Commission approves Aquarion's proposal to amortize a previously-approved, deferred liability as a credit to customers over a period of three years, and grants protective treatment to confidential information filed by Aquarion in support of its proposal.

**I. BACKGROUND**

On July 10, 2014, in Order No. 25,692, the Commission approved the creation of a deferred liability (*i.e.*, a credit) designed to pass through to customers of Aquarion Water Company of New Hampshire, Inc. (Aquarion), an anticipated \$905,000 federal tax benefit. In that order, the Commission deferred consideration of the time period over which the credit would be applied to customer bills "until Aquarion has filed its 2013 tax return and has provided an update to the Commission with the exact amount of the benefits to be received."

**II. POSITIONS OF THE PARTIES**

**A. Aquarion**

On November 13, 2014, Aquarion submitted a technical statement of the Director of Rates and Regulation Troy M. Dixon; a Motion for Protective Order and Confidential

Treatment, and attachments including 2013 federal and state consolidated tax returns of Macquarie Utilities, Inc. (MUI), the indirect parent of Aquarion “November 2014 Filing”. In that filing, Aquarion verified that the amount of the credit is \$905,000, which is the total amount of federal and state income tax paid or payable by Aquarion for the open tax years of 2011, 2012, and 2013. Aquarion’s November 13 filing and other docket filings, except for 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/2014/14-075.html>.

The \$905,000 total credit will be used in the first instance by Aquarion to cover the 2014 WICA surcharge of 1.3657%, which the Commission approved in April 2014 but temporarily set at zero (0.0000%) pending the outcome of DW 14-075. *Aquarion Company of New Hampshire, Inc.*, Order No. 25,668 (May 23, 2014); *see also* Verified Petition to Credit Customers for Benefit Arising from Change in Tax Regulations, March 17, 2014, at 2, para. 4 (proposing to credit customers for the amount of the tax benefit by booking the amount of the tax benefit as a regulatory liability to customers and then amortizing the liability by (a) reducing the amount of the liability by the amount of any deferred asset accrued as a result of the Commission's ruling on the Company's 2014 WICA surcharge, and (b) crediting the balance to customers over a three-year period commencing January 1, 2015). The remaining balance of the credit after deducting the 2014 WICA surcharge, Aquarion proposed to amortize over a period of three years, starting on January 1, 2015.

Aquarion provided copies of the November 2014 Filing to the New Hampshire Office of the Consumer Advocate “OCA”, which previously filed a letter of participation in this proceeding on March 26, 2014. Aquarion also provided copies of the filing to representatives

of two of the three municipalities within which it operates, Hampton and North Hampton, New Hampshire, as well as to a representative of the North Hampton Water Commission. *See* Letter to Debra A. Howland from Steven V. Camerino, Esq., dated November 13, 2014, enclosing November 2014 Filing.

#### **B. Commission Staff and Others**

On December 14, 2014, Commission Staff (Staff) recommended that the Commission approve the three-year amortization period for the tax benefits, as proposed by the Company. Staff noted that the three-year period corresponds with the number of open tax years on which the refund is based and, if approved, will result in a 4% credit on customer bills beginning for service rendered on and after January 1, 2015.

Staff also supported Aquarion's motion for protective order, which sought protection from disclosure of MUI's consolidated, federal and NH tax returns for 2013. Staff agreed that MUI's tax returns are not disclosed publicly, and fall within the scope of RSA 91-A:5, IV, which protects from disclosure "confidential, commercial or financial information." Staff also noted that the protection and confidential treatment requested by Aquarion is consistent with past Commission practice.

Neither the OCA nor the municipalities filed responses to the November 2014 Filing or Staff's recommendation. On December 29, 2014, Staff filed a supplement to its recommendation. Staff stated that it had contacted representatives of the OCA and each municipality for their positions. Staff stated that the OCA supports the Staff's recommendation and that the municipalities did not respond.

### III. COMMISSION ANALYSIS

#### A. Motion for Protective Order

We first address Aquarion's motion for protective order. We agree with Aquarion and Staff that the information contained within MUI's 2013 federal and state tax returns constitutes "confidential, commercial, or financial information," and that the request for protection from public disclosure is consistent with the New Hampshire Right-to-Know law, RSA 91-A:5, IV.

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the category of "confidential, commercial, or financial information" under RSA 91-A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008); *Sprint Communications Company*, Order No. 25,607 at 2 (Dec. 19, 2013)). Under that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009).

The Commission has previously found tax returns exempt from disclosure under RSA 91-A:5, IV. *See, e.g., Sacoridge Water, Inc.*, Order No. 24,561 (December 9, 2005) at 10 (with respect to the production of tax records, "the benefits of non-disclosure outweigh the benefits of public disclosure"). Likewise, in this case, we find that the

public's interest in reviewing this financial, commercially-sensitive information is not sufficient to outweigh the benefit derived from maintaining the confidentiality of such information. In addition, disclosure of this non-publically-disseminated information could result in financial harm to MUI, Aquarion, or Aquarion's customers, and there is no indication that disclosure of the information would inform the public about the workings of the Commission. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC at 486. For these reasons, we grant Aquarion's motion for protective order.

Consistent with past practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party, or any member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

### **B. Amortization Period**

The Commission approves Aquarion's request to amortize the balance of the deferred credit, after deducting an amount to cover the 2014 WICA surcharge,<sup>1</sup> over a period of three years. The Commission's statutory authority includes the power to limit customers' rates to a level that is "just and reasonable." *See* RSA 374:2 (public utilities to provide reasonably safe and adequate service at "just and reasonable" rates); RSA 378:7 (Commission required to determine and fix the utility's just and reasonable or lawful rates); RSA 378:28 (permanent utility rates shall only include a "just and reasonable" return on "just and reasonable" plant, equipment, or capital improvements which the Commission finds are 'prudent, used, and

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<sup>1</sup> *See Aquarion Company of New Hampshire, Inc.*, Order No. 25,668 (May 23, 2014) (the \$905,000 total credit will be used in the first instance by Aquarion to cover the 2014 WICA surcharge of 1.3657%, which the Commission approved in April 2014 but temporarily set at zero (0.0000%) pending the outcome of DW 14-075).

useful”). A “reasonable” rate results from a process “that appropriately balances the interests of ratepayers who desire the lowest possible rates and investors who desire rates that are higher.” *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606, 633, 639 (1986); *see* RSA 363:17-a.

As required by Order No. 25,692 (July 10, 2014), Aquarion verified the actual amount of the tax credit, \$905,000, which is the total amount of federal and state income tax paid or payable by Aquarion for the open tax years of 2011, 2012, and 2013. Staff verified the information provided by Aquarion in the November 2014 Filing and supports Aquarion’s proposal to amortize the total credit, after subtracting the 2014 WICA surcharge amount, over a three-year period beginning on January 1, 2015. Staff solicited the positions of the OCA and the three municipalities within Aquarion’s service territory. The OCA also supports Aquarion’s proposal, and the municipalities did not object.

The Commission finds the proposed three-year amortization schedule just and reasonable. Consistent with Order No. 25,692 (July 10, 2014), the three-year period is effective on January 1, 2015.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that Aquarion’s request to amortize a previously-approved tax benefit to customers over a three-year period is hereby APPROVED; and it is

**FURTHER ORDERED**, that Aquarion shall file properly annotated tariff pages in compliance with this order no later than 15 days from the issuance date of this order, as required by N.H. Admin. Rules Puc 1603.

**FURTHER ORDERED**, that Aquarion’s motion for protective order is GRANTED; and it is

**FURTHER ORDERED**, that Aquarion shall cause a summary of this Order *nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than January 16, 2015, and to be documented by affidavit filed with this office on or before January 23, 2015; and it is

**FURTHER ORDERED**, that all persons interested in responding to this Order *nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than January 21, 2015, for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than January 23, 2015; and it is

**FURTHER ORDERED**, that this Order *nisi* shall be effective January 26, 2015, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of January, 2015.

  
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Martin P. Honigberg  
Chairman

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director