

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

AQUARION WATER COMPANY OF NEW HAMPSHIRE INC.
AND EVERSOURCE ENERGY

Docket No. DW 17-XXX

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Aquarion Water Company of New Hampshire, Inc. (“Aquarion-NH”) and Eversource Energy (“Eversource”) (collectively, the “Joint Petitioners”) hereby move, pursuant to Puc 203.08 and RSA Chapter 91-A, the New Hampshire Public Utilities Commission (“Commission”) to grant protective treatment to certain confidential information contained within Exhibit ES-AQ-1 of the June 29, 2017 “Joint Petition for Approval of the Acquisition of Aquarion Water Company of New Hampshire, Inc. by Eversource Energy” (the “Petition”) filed by the Joint Petitioners contemporaneously with this motion. In support of this motion, the Joint Petitioners state as follows:

1. As set out in the Petition, the Joint Petitioners are seeking the Commission’s approval pursuant to the provisions of RSA 369:8, II and RSA 374:33 of the indirect acquisition of Aquarion-NH by Eversource. The transaction is a common stock purchase whereby Eversource will acquire all of the outstanding shares of Macquarie Utilities Inc. (“MUI”), which is Aquarion-NH’s parent holding company. The terms and conditions of the transaction are set forth in a Purchase and Sale Agreement dated June 1, 2017 (the “Agreement”), a copy of which is provided as Exhibit ES-AQ-1 to the Petition. The Agreement was the result of extensive negotiations between the contracting parties, and contains confidential business terms that were never intended to be made public. The majority of Exhibit ES-AQ-1 may be disclosed to the public record. Only

a narrow portion of the document setting forth specific commercial terms, pricing provisions, and indemnity provisions that were agreed to by the parties in negotiations are in need of protection. This information would be commercially damaging if revealed in the public record. This information is competitively sensitive information that, if disclosed, could harm the competitive business positions of the Joint Petitioners. Accordingly, the Joint Petitioners hereby request that the information identified in the confidential version of Exhibit ES-AQ-1 and more specifically described below be protected from public disclosure. The Joint Petitioners have submitted redacted and confidential versions of Exhibit ES-AQ-1 consistent with the Commission's requirements in Puc 201.04.

2. Pursuant to RSA 91-A:5, IV, records that constitute confidential, commercial, or financial information are exempt from public disclosure. In determining whether documents are entitled to the exemption, the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), *see also Public Service Company of New Hampshire*, Order No. 25,313 (December 30, 2011) at 11-12. The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If such an interest is at stake, the second step is to determine if there is a public interest in disclosure. The Commission has stated that 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. *Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. If both of these steps are met, the Commission balances the privacy interest with the public interest to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 (November 9, 2010) at 3-4.

3. The Joint Petitioners have a substantial privacy interest in the Agreement, and, in particular, the specific confidential terms for which protection is sought. The Agreement contains the business terms of the transaction that have not been disclosed publicly. MUI is not a public company and therefore the Agreement was not required to be filed publicly under the rules of the Securities and Exchange Commission. A majority of the Agreement may be disclosed to the public record, including all of the essential terms describing the structure of the transaction. In this motion, the Joint Petitioners seek protective treatment for only a narrow portion of the document setting forth specific commercial terms, pricing provisions, and indemnity provisions that are proprietary and competitively sensitive. This information would be commercially damaging if revealed in the public record.

4. Specifically, this motion seeks protection of portions of section 2 of the Agreement, relating to certain potential adjustment to the purchase price; section 8, relating to potential issues should the transaction not close; and section 9, relating to certain indemnification requirements between the parties. Sections 2 and 8 of the Agreement contain financial terms that could negatively impact the interests of Eversource shareholders if certain conditions were to occur, and section 9 contains concessions on indemnity requirements that are unique to this transaction. Each of the provisions specified as confidential within sections 2, 8, and 9 of the Agreement relate to financial obligations of the contracting parties that have been extensively negotiated and agreed upon among the parties. In other words, they are the products of confidential negotiations between contracting parties that relate only to the terms of this transaction and which were never intended to be made public. Disclosing this information could harm the negotiating or competitive position of the contracting parties and could expose them to harms or disadvantages in this or other endeavors. The Commission recognized this concern and has previously granted confidential

treatment to information that, if disclosed, will put the moving party at a disadvantage in future negotiations. *See, e.g., Abenaki Water Co., Inc.*, Order No. 25,945 (September 26, 2016) at 7; *National Grid plc, et al.*, Order No.24,777 (July 12, 2007) at 86 (“If public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of non-disclosure.”).

5. Moreover, the transaction itself is a common stock purchase between Eversource, a utility holding company, and Aquarion-NH’s unregulated parent, Macquarie Utilities Holdings, GP, the majority shareholder of MUI.¹ Therefore, the financial terms of the transaction do not relate directly to any of the finances of the public utilities implicated in the transaction. The actual parties to the Agreement are not “public utilities” and are not generally required to disclose or provide information to the Commission. For these reasons, there is a clear privacy interest at stake in the confidential information which would be harmed by disclosure.

6. The second criterion of the Commission’s analysis is whether there is a public interest in disclosure. This motion demonstrates that to the extent there is any public interest in the confidential sections of the Agreement, that interest is minimal. The transaction involves the parent holding company of Aquarion-NH and does not directly involve public utilities regulated by the Commission. Further, the motion seeks protection of narrow terms that relate only to potential financial obligations that may never arise, and if they do, the obligations would be borne by the contracting parties or their shareholders, and not the customers of any subsidiary utility

¹ MUI is the parent of Aquarion Company, a Delaware corporation and the parent of Aquarion Water Company. Aquarion Water Company is a Connecticut corporation and the parent of Aquarion-NH.

companies. Accordingly, there is no impact to customers of the public utilities at stake, and the public interest in the information is minimal. Furthermore, disclosing those terms will provide no insight into any of the factors that are under consideration by the Commission pursuant to RSA 369:8, II(b)(1) and RSA 374:33, namely whether customers would be no worse off with the acquisition than without the acquisition. Disclosing terms that would only arise should the transaction fail does nothing to advance any analysis that might be required under the relevant law. Accordingly, there is little, if any, public interest that would be served by disclosing the information.

7. As to the final requirement of the Commission's analysis, balancing the relevant public and private interests, there is strong potential that this information would be commercially damaging to the Joint Petitioners if it were revealed in the public record. On an overall basis, the information for which confidential treatment is sought is non-public information that, if disclosed, would cause substantial harm to the Joint Petitioners that could: (1) impact their ability to effectively close the transaction; (2) incentivize others to disrupt the transaction; and (3) potentially impact the financial interests of Eversource shareholders by allowing the public to access sensitive financial information relating to the transaction. Moreover, the Petition is but one of several state commission submissions required for approval of the transaction. The Joint Petitioners are seeking protection of this exact same information in each state on the same basis. Accordingly, disclosure would not only cause harm to the approval of the transaction in New Hampshire, but would also impede the process in other states. Furthermore, in that the information is not relevant to the Commission's inquiry and relates to matters that have not occurred, and may not occur, there is essentially no public interest in the confidential information. Accordingly, the Joint Petitioners

request that the Commission issue a protective order preventing disclosure of the information in the confidential version of Exhibit ES-AQ-1 as specified in paragraph 4 above.

WHEREFORE, the Joint Petitioners respectfully request that the Commission:

- A. Grant this Motion and issue an appropriate protective order; and
- B. Order such further relief as may be just and reasonable.

Respectfully submitted this 29th day of June, 2017.

EVERSOURCE ENERGY

By its Attorney,



Matthew J. Fossum, Esq.
Senior Counsel
Eversource Energy Service Company
780 N. Commercial Street
Manchester, NH 03101
603-634-2961
Matthew.Fossum@Eversource.com

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

By its Attorney,



Marcia A. Brown, Esq.
NH Brown Law, PLLC
P.O. Box 1623
Concord, NH 03302-1623
(603) 219-4911
mab@nhbrownlaw.com