

**THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION**

**Docket No. DW 17-114**

**EVERSOURCE ENERGY  
AND  
AQUARION WATER COMPANY  
OF NEW HAMPSHIRE, INC.**

Joint Petition for Approval of the Acquisition of  
Aquarion Water Company of New Hampshire, Inc.  
by Eversource Energy

**OBJECTION  
of  
EVERSOURCE ENERGY  
and  
AQUARION WATER COMPANY OF NEW HAMPSHIRE  
to  
PETITIONS TO INTERVENE**

**August 17, 2017**

Pursuant to RSA 541-A:32, N.H. Code of Admin Rule Puc 203.07, and the Order of Notice issued in this proceeding, Eversource Energy (“Eversource”) and Aquarion Water Company of New Hampshire, Inc. (“Aquarion NH”) hereby object to the Petitions to Intervene (“Petitions”) filed in this proceeding by State Representatives Mindi Messmer, Phil Bean, Mike Edgar, Tamara Le, and Jim McConnell (collectively, the Legislators) and by State Representative Robert Renney Cushing (the Legislators and Rep. Cushing collectively being the “Petitioners”). The Petitioners have not demonstrated any rights, duties, privileges, immunities or other substantial interests that may be affected by the proceeding. Hence, their Petitions do not meet the standards of RSA 541-A:32 to be granted intervenor status.

In support of this Objection, Eversource and Aquarion NH state:

1. Per the Order of Notice, this proceeding has a specific and narrow scope:

The filing raises, inter alia, issues related to RSA 369:8, II(b)(1) which provides that Commission approval for the acquisition shall not be required if the Companies demonstrate "that the transaction will not adversely affect rates, terms, service, or operation of the public utility within this state" and RSA 374:33 which provides that no public utility or utility holding company shall directly or indirectly acquire more than 10 percent, or more of the stocks or bonds of any other public utility or public utility holding company doing business in this state "unless the commission finds that such acquisition is lawful, proper and in the public interest."

2. The standard for reviewing petitions for intervention is set forth in the Administrative Procedure Act at RSA 541-A:32. To qualify for intervenor status as of right, a petitioner must set forth "facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law." RSA 541-A:32, I(b). The New Hampshire Supreme Court has held that to have standing a party must have specific personal legal or equitable rights at stake. *Duncan v. State*, 166 N.H. 630, 638 (2014) (an injury or an impairment of rights is required for standing). RSA 541-A:32, II provides the Commission discretion to grant intervention to others if such intervention "would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." In both intervention by right and permissive intervention cases, a petitioner for intervention must also meet the requirement "that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." *Id.* at I(c) and II.

3. Per the Order of Notice, petitions for intervention were due in this proceeding by August 15<sup>th</sup>, and each such petition was required to demonstrate how the petitioner's rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N. H. Code Admin. Rule Puc 203 .17. Order of Notice, at 3.

4. The Commission received petitions for intervention in this proceeding from the Legislators, Rep. Cushing, the Town of Hampton, and the Town of North Hampton. With regard to the towns, their intervention petitions include a litany of complaints concerning Aquarion NH's service quality which are well outside the limited scope of this proceeding. Eversource and Aquarion NH recognize that as municipalities served by Aquarion NH and as municipal customers, their requests for intervention in matters involving Aquarion NH have been routinely granted. Hence, Eversource and Aquarion NH will not object to the towns' requests for intervention per se. However, Eversource and Aquarion NH do object to any attempt by the towns to expand the scope of this proceeding beyond the issues set forth in the Order of Notice.<sup>1</sup> Eversource and Aquarion NH thus focus their objection on the petitions filed by the Legislators and Rep. Cushing.

5. This Commission has recently had an opportunity to address the participation of state legislators in adjudicative proceedings. In Docket No. DE 16-576 involving Net Metering, Representative Lee Oxenham sought intervenor status. During the pre-hearing conference in that proceeding, the Commission noted:

There is some history, we will acknowledge, that many legislators have participated in many processes before the Commission. There are circumstances in the past when legislative status has been deemed sufficient. That has not been the case recently, and there are a number of orders from the Commission on this topic specifically.

Transcript, DE 16-576, 6/10/16 at 14-15. Hence, the mere status of the Petitioners as state legislators is insufficient to automatically create status as an intervenor.

6. The Legislators fail to meet the statutory standards for a grant of intervention. The Legislators do not assert any facts demonstrating that their rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that they qualify as an intervenor under any provision of law as required by RSA 541-A:32, I(b).

---

<sup>1</sup> Eversource does note that even if the incorrect allegations of poor service quality in the towns' petitions are taken at face value, then a change of ownership can only improve their lot, and the proposed transaction certainly meets the RSA 369:8, II(b)(1) standard "that the transaction will not have an adverse effect on rates, terms, service, or operation of the public utility within the state."

There is no assertion that any of the Legislators are customers of Aquarion NH. The Legislators fail to provide any address or any contact information to ascertain such status. All that is provided is that they are state representatives from various districts. It is noted, however, that Rep. McConnell's district is in Cheshire County, and that he represents the towns of Richmond and Swanzey, far from Aquarion NH's service territory on the Seacoast.

7. As the sole basis for their request for intervention, the Legislators state:

... the undersigned petitioners maintain the acquisition of Aquarion Water Company of New Hampshire by EverSource Energy (sic) would be a violation of the N.H. Antitrust Code 356:1, et seq. by creating a monopoly and conspiracy to restrain trade with control of electricity, natural gas, water for emergency response and residential, commercial and industrial water.

No other basis for intervention is provided by the Legislators. Even if their allegation was true – which it is not -- the Legislators fail to describe how they are affected. Their failure to state with any specificity what rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding is fatal to their petition.

8. Moreover, their claim that the proposed transaction would violate RSA Chapter 356 is just plain wrong as a matter of law. RSA 356:8-a exempts from the purview of Chapter 356 activities “regulated by a regulatory body acting under a federal or state statutory scheme or otherwise actively supervised by a regulatory agency.” This proceeding, being held under the authority of RSA 369 and RSA 374 before the New Hampshire Public Utilities Commission, certainly falls within the scope of this exemption. *In Re Bell Atlantic*, 84 NHPUC 613 (Nov. 22, 1999) (antitrust argument found groundless based upon RSA 356:8-a).

9. The Legislators have attached to their pleading a printout of “Signatures” and “Comments.” That attachment is not in fact a listing of written signatures, but merely a listing of names, location, and dates. Who these people are, what their standing is, where they live, and what their rights, duties, privileges, immunities or other substantial

interests may be in this proceeding, are not stated. Indeed, this listing of names includes people who allegedly are located in such places as “Boston, US,” “Roanoke, VA,” “Oklahoma City, OK,” “Dennis Port, MA,” “Guilford, VT,” “Bedford, MA,” “US,” “Washington, PA,” “Quarryville, PA,” “Gorham, ME,” “Syracuse, US,” “Weymouth, US,” “Durham, NC,” “Norton, VT,” “Beverly Hills, CA,” “Westmoreland, Canada,” and even the fictitious “Baghdad, United Arab Emirates.” Other “signatories” are allegedly located in New Hampshire, but in places that are not served by either Eversource or Aquarion NH, such as Salem, Hanover, and Concord. There is a listing in the attachment for a “James McConnell” who may or may not be State Representative Jim McConnell, with a “location” of “Falmouth, US.” A mere listing of names and locations without any further detail is insufficient to be considered under RSA 541-A:32 for purposes of determining standing for the granting of intervenor status, and should be rejected by the Commission. Consideration of such listings of names without any accompanying detail would turn the intervention process into a mere popularity contest and would disrupt the orderly and prompt conduct of the proceedings.<sup>2</sup>

10. For the reasons set forth above, the petition for intervention submitted by the Legislators should be rejected.

11. Rep. Cushing’s request for intervention should also be rejected to the extent that he claims to represent other persons. As noted earlier, being a state legislator does not create standing to intervene on behalf of constituents. As with arguments raised by the Town of Hampton and Town of North Hampton, Rep. Cushing sets forth unsubstantiated allegations that are outside the scope noticed for this docket.

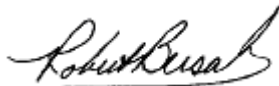
---

<sup>2</sup> The “Comments” also fail to state any rights, duties, or privileges of the Legislators. They are more akin to public comments and include statements such as: “Don’t trust corporate America;” “Northern Pass, now this;” “Eversource is buying Aquarion Water. The Texas-based company that currently owns NH, MA, CT electrical service...;” “I do not trust a resource and anything corporate America or does today (sic);” and, “Eversource are nothing but greedy bastards.” Such comments do nothing to advance the purposes of this proceeding and are contrary to “the interests of justice and the orderly and prompt conduct of the proceedings”. One comment of note is from Selectman Regina Barnes from the Town of Hampton: “It could be argued that Ever Sources (sic) acquisition of Aquarion could provide additional capital for local water infrastructure projects.”

**WHEREFORE**, Eversource Energy and Aquarion Water Company of New Hampshire, Inc. respectfully object to the petitions for intervention filed by the Legislators. The intervention request should be rejected because it fails to state any legal standing and such intervention would impair the orderly conduct of this proceeding. Eversource Energy and Aquarion Water Company of New Hampshire, Inc. also object to the request by Rep. Cushing to intervene other than as a customer. Rep. Cushing's constituents are residents of the Town of Hampton and the Town of Hampton has also intervened to represent its residents' interests.

Respectfully submitted this 17<sup>th</sup> day of August, 2017.

**EVERSOURCE ENERGY**

By:   
\_\_\_\_\_

Robert A. Bersak  
Chief Regulatory Counsel

Matthew J. Fossum  
Senior Counsel

Eversource Energy  
780 N. Commercial Street,  
P.O. Box 330  
Manchester, NH 03105-0330  
603-634-3355

[Robert.Bersak@Eversource.com](mailto:Robert.Bersak@Eversource.com)  
[Matthew.Fossum@Eversource.com](mailto:Matthew.Fossum@Eversource.com)

Daniel P. Venora, Esq.  
Jessica Buno Ralston, Esq.  
Keegan Werlin LLP  
265 Franklin Street, 6th Floor  
Boston, MA 02110  
617-951-1400  
[dvenora@keeganwerlin.com](mailto:dvenora@keeganwerlin.com)  
[jbuno@keeganwerlin.com](mailto:jbuno@keeganwerlin.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](mailto:mab@nhbrownlaw.com)

**CERTIFICATE OF SERVICE**

I certify that on this date I caused this Objection to be served on parties listed on the Commission's service list for this docket, as well as on Rep. Messmer and Rep. Cushing.

August 17, 2017



\_\_\_\_\_  
Robert A. Bersak