

THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

EVERSOURCE ENERGY  
AND  
AQUARION WATER COMPANY OF NEW HAMPSHIRE INC.

Docket No. DW 17-114

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**  
**REGARDING DISCOVERY REQUEST Q-HAMPTON-1-009**  
**ISSUED BY THE TOWN OF HAMPTON**

Pursuant to Puc 203.08 and RSA Chapter 91-A, Eversource Energy (“Eversource”) and Aquarion Water Company of New Hampshire Inc. (“Aquarion-NH”) (collectively, the “Joint Petitioners”), hereby move the New Hampshire Public Utilities Commission (“Commission”) to grant protective treatment to certain confidential information contained the response to discovery request Q-HAMPTON-1-009 issued by the Town of Hampton. In support of this motion, the Joint Petitioners state as follows:

1. In this submission, and as set out in the Verified Petition, the Joint Petitioners are seeking the Commission’s approval of the acquisition of Aquarion-NH’s parent company, Macquarie Utilities Inc. (“MUI”), by Eversource.
2. In Q-HAMPTON-1-009, the Town of Hampton asked:  

What does the acquisition premium in this transaction amount to, as referred to on page 11 of the Petition, regardless of whether the Joint Petitioners propose to record that premium on the books of account of Aquarion – NH as a result of the transaction?
3. The Joint Petitioners responded to this discovery request using the procedure set forth in Puc 203.08 (d) and (e). Per Puc 203.08(d), an unredacted version of the response to Q-

HAMPTON-1-009 was provided to Commission Staff. Similarly, per RSA 363:28, VI, a copy of the unredacted response was provided to the Office of the Consumer Advocate. Other parties were provided with a redacted version of the response. This Motion is being made per the provisions of Puc 203.08(e). A copy of PSNH's redacted response to this question is attached hereto as Attachment 1. Per Rule Puc 203.08(f) copies of the confidential response are being provided to the Commission under separate cover.

4. The response to Q-HAMPTON-1-009 provides a calculation of the acquisition premium for the proposed transaction. This calculation and data include non-public financial data of MUI.
5. MUI is not a Securities and Exchange Commission ("SEC") reporting company, and as a non-public company, its financial information is confidential, proprietary, competitive and commercially sensitive. MUI does not have a requirement to report financial information publicly because unless and until this transaction is approved and completed, MUI will remain a privately-owned entity. The MUI financial data contained in the response to Q-HAMPTON-1-009 has not been disclosed publicly.
6. The acquisition premium amount is competitively sensitive and will be treated as confidential by Aquarion-NH and MUI through the time of closing. The Joint Petitioners have not disclosed this information publicly and treat the information as proprietary within their respective organizations. In this context, the public disclosure of the MUI data in the response to Q-HAMPTON-1-009 would be commercially damaging if revealed in the public record. *See Re 2<sup>nd</sup> Century Communications, Inc.*, 84 NHPUC 410 (1999) (grant of confidential treatment to financial data of a private closely held corporation as there

was no significant benefit to the public by requiring disclosure of private financial information.)

7. 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.
8. There is clearly a privacy interest in the confidential information for which protection is sought. 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 (“SEC”). If this transaction is ultimately effectuated, the information would be disclosed in Eversource’s SEC filings and would no longer be among MUI’s privacy interests. That event, however, has not yet occurred.

9. Moreover, in that the actual transaction is one between Eversource Energy, a utility holding company, and Aquarion-NH's unregulated parent, Macquarie Utilities Holdings, GP, the financial terms of the transaction do not relate directly to any of the finances of the public utilities implicated in the transaction. Thus, the actual parties to the Agreement are not "public utilities" and are not generally required to disclose or provide information to the Commission. Should the proposed transaction not be approved, release of MUI's private financial information cannot be undone. For these reasons, there is a clear privacy interest at stake in the confidential information which would be harmed by disclosure.
10. With respect to the second criterion – whether there is a public interest in disclosure – the Joint Petitioners contend that to the extent there is any public interest, it is minimal. It is minimal because, as noted above, the transaction is not between regulated utilities; it is between one publicly-traded and one non-publicly-traded company. Importantly, these companies are not regulated by the Commission. For these reasons, the public interest in the confidential information is minimal. To illustrate the remoteness of the public's interest in this data, the Joint Petitioners stated in response to Staff data request Q-STAFF-1-005 (attached hereto as Attachment 2) that:

[T]he acquisition premium paid by Eversource will be accounted for as goodwill on the books of the Eversource parent company. There will be no impact to the books and records of Aquarion Water Company of New Hampshire from the acquisition premium paid by Eversource.

In addition, disclosing the confidential data will provide no insight into any of the issues 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. The information for which confidential treatment is sought has no impact on

the overall issue before the Commission. Because the data will not impact the books and records of Aquarion-NH and will not inform the public of the conduct and activities of the Commission, disclosure is not warranted. Accordingly, there is no public interest that would be served by disclosing the information to the public.

11. As to the final requirement, balancing the relevant public and private interests, as noted above, there is a clear and evident harm that would obtain by disclosing the information and the public's interest in that data is minimal, at best. On an overall basis, the information for which confidential treatment is sought is non-public information that, if disclosed, would cause substantial harm to MUI if the transaction, for any reason, does not close. For these reasons, the harm clearly outweighs the public's interest in disclosure.
12. This matter is conditioned upon receipt of regulatory approvals in other states, including, Connecticut and Massachusetts. Protection of this same information has been sought in those jurisdictions for the same reasons set forth herein. Therefore, a failure to obtain confidential treatment of this information in this proceeding would not only cause harm in New Hampshire, but would also impact the regulatory approval processes occurring elsewhere. In that the information is not pertinent to the Commission's inquiry there is essentially no public interest in the confidential information. Accordingly, the Joint Petitioners request that the Commission issue a protective order preventing public disclosure of the information in response to Q-HAMPTON-1-009.

**WHEREFORE**, the Joint Petitioners respectfully request that the Commission:

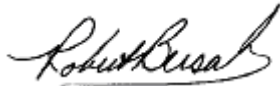
A. Grant this Motion and issue an appropriate protective order; and

B. Order such further relief as may be just and reasonable.

Respectfully submitted this 29th day of September, 2017.

**EVERSOURCE ENERGY**

By its Attorneys,



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

By its Attorney,

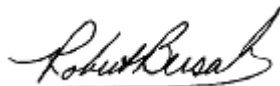


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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2017, the forgoing Motion for Protective Order and Confidential Treatment was provided by electronic delivery to the Docket-Related Service List for Docket No. DW 17-114 pursuant to Puc 203.11.



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Robert A. Bersak