

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

Aquarion Water Company of New Hampshire, Inc. and Eversource Energy
Request for Approval of Acquisition

Docket No. DW 17-114

Motion of Representative Renny Cushing and Representative Mindi Messmer for Rehearing

Pursuant to RSA 541:3, Representative Robert Renny Cushing and Representative Mindi Messmer move for a rehearing on the decision of the Commission issued by letter on October 13, 2017. For reasons outlined in this motion, the October 13, 2017 decision of the Commission to adopt a “Don’t Worry, Be Happy” standard to the proposed combination of the largest electric utility in the state and New England with the largest private water utility in New England will adversely affect rates, terms, service and operations, is not lawful or proper, will result in unjust and unreasonable rates for customers of Eversource and Aquarion, is not in the public interest or good, is contrary to RSA 541-A:32, RSA 374:33, RSA 369:8 II, (b)(1), RSA 374-F, RSA 374-G, violates Part II, Article 83 of the New Hampshire State Constitution and violates the Dues Process and Equal Protection guarantees of the Constitutions of New Hampshire and the United States. In support of this motion Representatives Cushing and Messmer say as follows:

1) The Commission erred in denying standing to intervene to Representatives Renny Cushing, Representatives Mindi Messmer and Representative Jim McConnell as state

representatives to appear on behalf of their constituents whose rights, duties, privileges, immunities and other substantial interests, including the public interests, are directly impacted by the combination of utilities proposed in this docket to, contrary to the interests of justice.

2) The Commission erred when it denied standing to intervene to Representative Mindi Messmer, a customer of Eversource. In denying standing to Representative Messmer, the only captive customer of Eversource who sought to intervene in this docket to protect herself from unlawful taking of property through electric bills by the Eversource monopoly, while granting standing to intervene to the Aquarion customers who sought intervention, the Commission established a two-tiered system of intervention and justice in this matter, relegating Eversource customer to a status of second-class consumers, contrary to the constitutional requirements of due process and equal protection under the law.

3) The Commission erred when it ruled that the \$1.6 Billion combination of Eversource, the largest New Hampshire electric utility holding a monopoly franchise on the transmission and distribution of electricity in the state, with Aquarion, the largest private water utility in New England, did not require approval by the legislature or the Commission under RSA 369:8, II(b)(1) and did not require a finding that this combination of an electric and a water monopoly was lawful, proper and in the public interest under RSA 374:33.

4) In adopting the “Don’t Worry, Be Happy” standard for this unprecedented combination of a New Hampshire electric utility with a New Hampshire water utility, and

precluding a thorough investigation and examination of the costs, including “opportunity costs” for immediate lower rates, and benefits of the proposal and the impact it would have upon customers of Eversource, Aquarion, and the public good of state and its citizens, the Commission failed to comport with Part II Article 83, Control of Corporations, Monopolies, etc. of the New Hampshire Constitution which requires that the size and functions of all corporations should be limited and regulated as to prohibit fictitious capitalization.

5) The Commission erred when it ignored the injustice of the high rates paid by current Eversource customers, including the approximately 10% cost (1.7 cents KWH) that is part of the fictitious capitalization known as “stranded costs” that is included in bills to pay off and reward the company for its disastrous decision and mismanagement of putting scrubbers on the Merrimack Coal Plant. The Commission erred when it failed to consider the “opportunity cost” to customers of both Eversource and Aquarion to have lower rates rather than have customer paid-for assets churned to pay for a combination that only benefits stockholders. Justice requires that Commission direct that Eversource, rather than spending hundreds of millions in excess cash to acquire more captive customers through the takeover of Aquarion, instead should use the money extracted from its electric ratepayers to reduce the electric bills of commercial and residential customers of Eversource, and focus on the improving the terms, service and operations of its core business of providing a modern system for the transmission and distribution of electricity, as envisioned by RSA 374-F and RSA 374-G.

6) The Commission erred when it failed to examine the history of rate increases for Aquarion customers since the last time it approved an acquisition of Aquarion, in DW 06-094, to gain insight in the future rate path Aquarion customers can expect if the Eversource takeover is successful. In Order No.24,691 the Commission found that acquisition would “not adversely affect rates, terms, service or operation.” As the attached chart provided to the parties by the Town of Hampton shows, the reality was quite different, as once the acquisition was approved, rates escalated. The Commission has a responsibility to go beyond the statement made by Eversource that rates would not increase at the time of takeover, but to make a determination as to the likely magnitude of future rate increases to make a determination of whether or not the combination of Eversource and Aquarion was in the interests of Eversource and Aquarion customers and in the public interest.

7) The Commission erred when it ignored issues raised by Representative Cushing that demonstrated the proposed combination of Eversource and Aquarion were not in the public interest or public good for Aquarion customers and the people of Hampton, North Hampton and Rye and would result in net harm to customers and the communities:

a) Eversource has no experience in providing clean, safe and affordable drinking water for residential and commercial customers, and the people of the towns of Hampton, North Hampton and Rye should not be forced become the guinea pigs for an Eversource experiment in operating a water utility.

b) Eversource has no experience operating a complex fire suppression system and it is not in the interest of public safety or town treasuries for Eversource to own and operate fire suppression systems.

c) Eversource has one of the most, if not the most, powerful political lobbyists team in the state of New Hampshire. It is not in the public good to have the water supply and distribution systems of Hampton, North Hampton, and Rye owned by the most powerful lobby in the state and at the same time have Eversource continue to spend thousands of dollars on lobbying money to defeat legislation that would benefit the towns by eliminating tax loopholes and making utilities pay their fair share of property taxes so towns can reduce taxes.

d) At the same time Eversource is attempting to take over the public water system in the seacoast, the company is attempting to force the controversial Northern Pass Project on the communities of the north country over the concerns and objections of the residents and businesses of that part of the state. It does not make financial sense and is not in the public good to have Eversource acquiring Aquarion at the same time it pursues such an endeavor.

`8) In deciding that it would not have a contested adjudicative hearing process on the proposed combination of Eversource and Aquarion, the Commission precluded a discussion concerning the implications for taxpayers of the transaction. In response to a data request by Representative Cushing, Eversource responded that it did not intend to pay real estate transfer tax when it acquired beneficial control and ownership all of Aquarion NH's property, including its real estate in Rockingham County. It is not in the public interest or public good to have Eversource avoiding paying its fair share of taxes, including real estate transfer tax.

WHEREFORE, Representatives Robert Renny Cushing and Mindi Messmer respectfully request that the Commission:

- A. Grant this Motion for Rehearing.
- B. Rule that state representatives may have standing before the Commission to represent their constituents whose rights, duties, privileges, immunities and other substantial interests are directly impacted by this and other dockets.
- C. Rule the exclusion of Eversource Customer Mindi Messmer from having standing in this docket while granting standing to Aquarian customers Cushing and Bean was an error in violation of the equal protection clauses of the United States and New Hampshire Constitutions, end the practice of a two-tier system of standing before the Commission that discriminates against Eversource customers, and grant standing to Mindi Messmer and other Eversource Customers.
- D. Rule that the proposed acquisition of Aquarion by Eversource will adversely affect rates, terms, service and operations, is not lawful or proper, will result in unjust and unreasonable rates for customers of Eversource and Aquarion, is not in the public good, is contrary to RSA 541-A:32, RSA 374:33, RSA 369:8 II, (b)(1), RSA 374-F and violates Part II, Article 83 of the New Hampshire State Constitution.
- E. Deny the Joint Petition for Approval of the Acquisition of Aquarion Water Company of New Hampshire, Inc., by Eversource Energy.
- F. Issue such other and further orders as may be just and reasonable and consistent with the public interest.

Respectfully submitted this 13th day of November 2017, by



Representative Robert Renny Cushing
395 Winnacunnet Road
Hampton, NH 03842
603 926 2737
reprennycushing@gmail.com

Representative Mindi Messmer
291 Washington Road
Rye, NH 03870

I hereby certify that I have submitted seven copies of this Petition to Debra Howland, Executive Director of the Commission, and emailed a copy to other parties on the listserve of Docket DW 17-114.



Rep. Robert Renny Cushing

November 13, 2017