

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Aquarion Water Company of New Hampshire

Request for Change in Rates

Docket No. DW 20 – 184

**NORTH HAMPTON’S PETITION TO INTERVENE; PETITION FOR
REPARATIONS AND PRELIMINARY STATEMENT OF POSITIONS**

NOW COMES the Town of North Hampton (“North Hampton”), by and through NH Water Law and: (a) petitions to intervene pursuant to RSA 541-A:32; (b) petitions for reparations pursuant to RSA 365:29; and (c) offers the following preliminary statement of positions in response to Order No. 26,449; and in support of the foregoing, states as follows:

I. PETITION TO INTERVENE

1. RSA 541-A:32, I provides for intervention in a proceeding when “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”. The Town of North Hampton requests intervention as a full party in this proceeding.

2. The North Hampton Select Board is authorized by statute to “manage the prudential affairs of the town and perform the duties by law prescribed.” RSA 41:8. The North Hampton Board of Water Commissioners represents the interests of the Town of North Hampton and its residents related to its water supply. Cf. RSA 38:18; RSA 41:2. Both the Select Board and its Water Commissioners have voted to intervene in this proceeding to represent the prudential interests of the Town’s residents and its interests as a public fire protection customer.

3. According to the schedules submitted in this proceeding, the Towns of Hampton and North Hampton as well as Rye Beach and Jenness Beach, pay a total of \$849,320 per year in

public fire protection charges to maintain capacity in Aquarion’s water system for fire protection.¹ Aquarion proposes to increase public fire protection charges by some 33.3% to \$1,131,877 per year.² North Hampton’s fire protection charges are proposed to increase to \$340,706 per year.³ These charges directly and substantially impact the financial interests of the Town of North Hampton and its residents.

II. PRELIMINARY STATEMENT OF POSITION REGARDING FIRE PROTECTION SERVICE

4. Ordinarily, plant owned by a utility is operated and maintained by the utility.

RSA 374:30, I.⁴ However, the Commission’s Rule Puc 606.03 provides that:

Puc 606.03 Fire Protection and Hydrants.

(a) A utility and an applicant may negotiate regarding fire hydrants, public and private fire protection facilities and connecting mains, as to the following:

(1) Specifications;

(2) Location;

(3) Installation;

(4) Responsibility for maintenance; and

(5) Ownership.

(b) Fire hydrants and public and private protection facilities shall be installed in conformity to the requirements of the utility.

(c) **Hydrants maintained by the utility** shall be inspected and flushed at least once each year, and shall be checked for freezing as often as necessary to insure that they are functioning properly.

(d) A record of each hydrant shall be maintained showing the size, type, location, date of inspection and flushing and the results thereof.

(e) Reports of periodic inspection of flushing of hydrants shall be reported to the commission on Form E-17, described at Puc 609.10 once a year.

(emphasis added).

¹ DW 20 – 184, Testimony of John F. Guastella, Schedule 17.

² Id.

³ Id.

⁴ RSA 374:30 provides that: “Any public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state, or contract for the operation of its works and system located in this state, when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise ...”.

5. The Town of North Hampton is unaware of any agreement by which the Town assumed liability or responsibility for maintenance or snow removal for Aquarion's hydrants in North Hampton. Notwithstanding the absence of any such agreement, Aquarion has refused to perform snow removal required to access, maintain and use its fire hydrants during winter months. As a result, the work to remove snow in the Town of North Hampton is performed by fire fighters in the Town, despite the substantial charges paid by North Hampton, Hampton and other public fire protection customers for fire protection service.

6. Under RSA 374:30, a utility may contract for the operation and maintenance of its hydrants by agreement approved by the Commission "but not otherwise". There are no large public water utilities in New Hampshire other than the Pennichuck companies and Aquarion. On information and belief, the Pennichuck utilities perform snow removal on its fire hydrants.⁵ There does not appear to be any universal rule or requirement that a Town such as North Hampton is obligated to perform snow removal services for a water utility without compensation. In fact, the Commission's Rule Puc 606.03 suggests that municipalities may agree to undertake such responsibility voluntarily, subject to Commission approval under RSA 374:30, but municipalities are not required to do so.

7. The expense of fire protection charges and costs for snow removal are born by taxpayers in the Towns of North Hampton. These fire protection charges and the costs for snow removal are passed through to the Town's tax payers, including taxpayers who do not have access to Aquarion's hydrants or receive any special benefit from Aquarion's hydrants. As a result, Town tax payers who are not customers of Aquarion and who derive no special benefit from its system are forced to subsidize a portion of Aquarion's current \$849,320 and proposed

⁵ See e.g. DW 18-189, Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., Pittsfield Aqueduct Company, Inc., 2018 CIAC Tariff Amendments, Responses to Staff Data Requests- Set 1, Response to Staff 1-7.

\$1,131,877 in fire protection charges, plus the Town's costs to remove snow from Aquarion's hydrants.

8. RSA 378:10 provides that: "No public utility shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of service in any respect whatever or subject any particular person or corporation or locality, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatever." Aquarion's rates for fire protection service impose substantial charges and costs on the Town and its residents who may derive little or no special benefit from its service. Such charges are unduly prejudicial as well as unjust and unreasonable within the meaning of RSA 378:7 and RSA 378:10.

9. The merits and costs of the current fire protection charges should be investigated in this proceeding with a goal of ensuring that fire protection service is adequate and just and reasonable under RSA 374:1 and rates that are just and reasonable and do not result in unfair prejudice or advantage to some residents who do not benefit from the service.

III. PETITION FOR REPARATIONS AND PRELIMINARY STATEMENT DUE TO OVER-EARNINGS

10. In prior years, Hampton and North Hampton have undertaken to draw to the Commission's attention that Aquarion's approved rates, including WICA charges, have resulted in charges that are both unjust and unreasonable and in excess of the allowed rates of return authorized by the Commission. North Hampton has attached hereto a summary of the amounts by which Aquarion's approved rates have allowed it to exceed reasonable rates of return, notwithstanding the prohibition against rates that are unjust and unreasonable contained in RSA 378:7 and RSA 374:2.

11. In 2020, Aquarion's earnings significantly exceeded the earnings during the 2019 test year. Based on the experience in 2020, the 2019 test year may not reasonably reflect or provide an appropriate yardstick to measure the income and expenses for setting Aquarion's rates. For example, Aquarion's report to the Commission for the Third Quarter of 2020 shows that its Net Income in the first 9 months of 2020 was \$1,595,000. This is 179% of its \$892,000 Net Income during the same period in 2019, nearly double what it earned during the 2019 test year. This and other information strongly suggests that Aquarion may not be entitled to any increase in rates. The 2019 Test Year data needs to be averaged or adjusted based on experience in 2020 and other periods when financial results significantly exceeded the results from the 2019 test year.

12. To the extent that examination of test year and other information shows that Aquarion realized unjust, unreasonable or unlawful returns on its investment, North Hampton requests that the Commission order that reparations be paid to customers covering the two years prior to the date of this petition. RSA 374:2; RSA 378:7; RSA 365:29.

IV. PRELIMINARY STATEMENT AS TO WIGGIN WAY EXPANSION

13. In DW 17 – 065, North Hampton has requested that the Commission schedule a hearing in order to consider the appropriate “just and reasonable” rate. North Hampton incorporates by reference its request in that proceeding. A determination as to whether rate consolidation should be allowed should be made based the costs to provide service to that system. This information needs to be provided prior to consideration of rate consolidation and an order of notice as to the appropriate rate. Approval of a consolidated rate in this proceeding could result in an unreasonable subsidy or preference to those customers.

V. PRELIMINARY STATEMENT AS TO COST OF EQUITY.

14. Aquarion's proposed rate of return of equity of 10.25% exceeds the baseline levels of 9.45% determined by the Commission in recent water utility cases prior to adjustments for challenges facing small water systems. This is an important issue with implications beyond this proceeding. North Hampton requests that Commission consider having Staff and/or the Office of Consumer Advocate retain an independent consultant experienced in reasonable rates of return.

WHEREFORE North Hampton requests that the Commission:

- A. Grant North Hampton's intervention in this proceeding as a full party pursuant to RSA 541-A:32;
- B. Order that Aquarion pay reparation to Aquarion's customers for unjust, unreasonable and unlawful charges paid by Aquarion's customers covering the two year period prior to March 5, 2021, including public fire protection charges, in violation of RSA 365:29, RSA 374:2 and RSA 378:7 & 10; and
- C. Grant such other relief as justice may require.

Respectfully submitted,

TOWN OF NORTH HAMPTON

By its Counsel,

NH WATER LAW



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Dated: March 5, 2021

CERTIFICATE OF SERVICE

I certify that a complete copy of the foregoing is being sent this day to all persons on the Commission's official service list for this proceeding.

A handwritten signature in black ink, appearing to read "Justin Richardson", written in a cursive style.

Justin C. Richardson, Esq.