

April 27, 2023

Via Electronic Mail Only

Daniel Goldner, Chair
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: Docket No. DW 21-061 - Petition to Approve New Hampshire Drinking Water and Groundwater Trust Fund Financing for Rosebrook Pressure Reduction Project Aquarion Water Company of New Hampshire o/b/o Abenaki Water Company Information regarding *Appeal of Easton* analysis of Rosebrook financing

Chair Goldner:

On January 31, 2023, Aquarion Water Company of New Hampshire, Inc. (“Aquarion” or the “Company”) filed on behalf of Abenaki Water Company, a newly revised petition and supporting testimony and attachments for review and approval by the Public Utilities Commission (“Commission”) of financing for Phase 1 of the Rosebrook Pressure Reduction Project. In the updated and revised petition, the Company referenced why this financing should be treated as a routine financing under the standard established by the New Hampshire Supreme Court in *Appeal of Easton*, 125 N.H. 205, 211 (1984). See Updated Petition at 4. Aquarion provides the following *Easton* analysis in support of the instant case being one of a “routine” financing and therefore warranting a more limited *Easton* review and approval via order *nisi*.

In *Easton*, the Court held that the public good “is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case. If it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is also for the public good.” *Appeal of Easton* at 212. Here the public good is not in question: the Department of Environmental Services (“DES”) has declared through a mandate that there are health and safety concerns that must be resolved.¹ In this instance, it is not only reasonable that the Company (on behalf of Abenaki) take this “certain course” with its property, it has been directed to do so by its regulators. The resolution of the health and safety concerns embodied in the DES mandate justify treatment of this financing as routine. The Commission has repeatedly held that “[a] routine request calls for a more limited examination of whether the use of financing proceeds [is] in the public good without further review of possible alternative uses of the funds.” *Public Service Co. of N.H.*, Order No. 26,746 (December 14, 2022) at 7 (citing to *Public Service Co. of N.H.*, Order No. 25,050 (December 8, 2009)).

¹ The DES mandate referred to is the Letter of Deficiency issued on December 1, 2020, which DES amended on October 20, 2021 and filed by the Company to this docket at Tab 10.

While the impact on rates and effect on capitalization are also factors that *can be* determinative of a routine financing, the Commission has made clear that impacts are not the sole determinant in the rigor for an *Easton* inquiry:

The lesson of *Easton* is that ***certain financing related circumstances are routine***, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing . . . the proper application of *Easton* ***is determined by the context of the facts and issues of the case.***

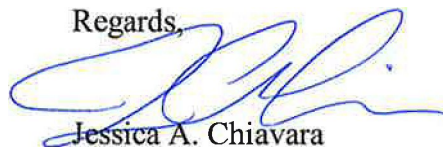
Order No. 25, 050 at 14 (emphasis added).

Here, the context is defined by two facts and issues: the existence of DES mandate and the health and safety issues it represents; and that the funding from the Drinking Water and Groundwater Trust Fund (“Fund”) is the lowest cost funding available to the Company. The impact on rates, while likely significant, is overridden by the obligation of Abenaki to resolve these health and safety issues and the public good that will result from having them resolved. Whether Abenaki should obtain the funds is not at issue here, as there is no Company discretion being exercised; these costs must necessarily be incurred (though they still must be incurred prudently to be recovered in future) and it is doing so at the lowest possible cost. There is likewise no need to examine potential alternative uses for the funds, as this funding is dedicated solely to this remedy. Since Abenaki must incur these costs, and this financing is the lowest cost option for assuming this debt, the financing is conclusively in the public interest and the *Easton* inquiry need go no further.

Thus, while this financing may not be “routine” in that it is not intended for the ordinary course of utility operations, it does merit the routine treatment of a limited *Easton* review by the Commission, as the facts and context comprising the public good are in this instance definitive. Treatment of this financing as routine by the Commission in its review and determination of the public good is justified.

Consistent with current Commission policy, this informational filing is being made electronically only; paper copies will not follow. If you have any questions, please contact me. Thank you for your assistance with this matter.

Regards,



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Senior Counsel, Eversource Energy
o/b/o Aquarion Water Company of New
Hampshire, Inc. and Abenaki Water Company

cc: DW 21-061 Service List