

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

Abenaki Water Company and Aquarion Company
Request for Approval of Acquisition

Docket No. DW 21- 090

**BRIEF OF AQUARION COMPANY
AND ABENAKI WATER COMPANY**

I. Introduction

Aquarion Company (“Aquarion”) and Abenaki Water Company (“Abenaki”) (together, the “Joint Petitioners”) submit this brief in accordance with the Procedural Order issued on October 27, 2021 (“Procedural Order”) by the New Hampshire Public Utilities Commission (the “Commission”).¹ In this brief, the Joint Petitioners demonstrate that Aquarion’s acquisition of Abenaki (the “Proposed Transaction”) is lawful, proper and in the public interest pursuant to RSA 374:33; will provide benefits to customers not available in the absence of the Proposed Transaction; and – definitively – will not produce any harm to Abenaki customers.² The Proposed Transaction will be transformational for Abenaki and its customers in that Aquarion brings a high level of technical capability, operating expertise, financial strength and customer engagement to the equation. Abenaki customers will undoubtedly benefit from ownership of the Abenaki systems by a larger, experienced operator with greater financial resources and a depth of expertise to enhance the reliability of the systems and manage them into the future.

Aquarion’s acquisition of NESC and its subsidiaries has already received regulatory

¹ The Procedural Order granted the Joint Petitioners’ October 20, 2021 Motion for Approval of Briefing Schedule to assist with discussion of the issues at the November 10, 2021 evidentiary hearing. The Procedural Order provides an opportunity for reply briefs by all other parties on November 8, 2021.

² The Proposed Transaction will occur pursuant to the terms of the Agreement and Plan of Merger dated April 7, 2021 (the “Agreement”) by and between Aquarion and Abenaki’s corporate parent, New England Service Company (“NESC”). The Proposed Transaction will result in Aquarion having ownership and control of NESC and its subsidiaries, including Abenaki, which will become an indirect wholly owned subsidiary of Aquarion.

approvals in Connecticut and Massachusetts. If the Commission were to similarly grant Aquarion the privilege of acquiring Abenaki, Aquarion will close on the Proposed Transaction by year end and integrate Abenaki into Aquarion's overall operations. Aquarion will focus its efforts on maintaining and improving Abenaki's operations consistent with the best-practice standard of Aquarion's other operating companies. As detailed below, the evidentiary record in this proceeding supports a determination by the Commission that the Proposed Transaction is lawful, proper and in the public interest and should be approved.

II. Procedural Background

The Joint Petitioners submitted a verified joint petition to the Commission on April 30, 2021 ("Joint Petition") requesting approval of Aquarion's acquisition of Abenaki pursuant to RSA 369:8, II and RSA 374:33. The Commission conducted the first phase of this proceeding pursuant to RSA 369:8, II, including discovery, a technical session, and two days of evidentiary hearings in June 2021. The Commission subsequently issued Order No. 26,506 on August 6, 2021 (the "Preliminary Order") making a preliminary determination that the proposed transaction would result in an adverse effect on rates. The Joint Petitioners filed an amended submission in response to the preliminary determination on August 20, 2021. On September 19, 2021, the Commission issued Order No. 25,519 setting forth "a final written determination pursuant to RSA 369:8, II(b)(5) that the acquisition of Abenaki Water Company by Aquarion Company will have an adverse effect on rates" (the "Final Order"). Final Order at 1. As stated in the Final Order, this determination was made in the context of the preliminary review process authorized by RSA 369:8, II(b)(5). The Final Order then stated that the Commission "will now review the proposed acquisition pursuant to RSA 374:33³ and, after an opportunity for a public hearing, issue a ruling

³ RSA 369:8, II provides that should the Commission make a determination of adverse effect during the first phase, "the Commission should review the transaction under the statute which would have otherwise applied but for this section... ." RSA 369:8, II(b)(5).

within 60 days.” Final Order at 1.

The Commission directed the Joint Petitioners to “submit any further testimony and evidence required for the Commission’s review of the proposed acquisition pursuant to RSA 374:33.” Final Order at 1. The Joint Petitioners filed supplemental testimony on October 8, 2021 (“Supp. Test.”). On October 15, 2021, the Commission issued a procedural order setting a procedural schedule for this second phase of the proceeding, including an additional evidentiary hearing to be held on November 10, 2021.

III. Public Interest Standard

Based on the Final Order, the Proposed Transaction is subject to review under the legal standard set forth in RSA 374:33. RSA 374:33 states as follows:

No public utility or public utility holding company as defined in section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C. section 78-P, whichever is less, of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless the Commission finds that such acquisition **is lawful, proper, and in the public interest...**

RSA 374:33 (emphasis added).

Based on factors the Commission has considered in prior mergers, a transaction is deemed lawful, proper, and in the public interest if it will result in “no net harm” to customers.⁴ A proposed merger or acquisition meets the public interest standard when the following factors, previously considered by the Commission, are taken into account: (1) the effect on rates;⁵ (2) the effect on local operations, including staffing and customer service;⁶ (3) technical capabilities and

⁴ See *New England Electric System*, Order No. 23,308 84 NHPUC 502, (October 4, 1999) (“NEES 1999”); *Aquarion Water Company of New Hampshire*, Order No. 24,691, 91 NHPUC at 3 (October 31, 2006) (“Aquarion 2006”); *Hampton Water Works, Inc.*, Order No. 23,924, 87 NHPUC 104 (March 1, 2002) (“Hampton Water Works”).

⁵ Aquarion 2006 at 9; Hampton Water Works, at 10.

⁶ Aquarion 2006, at 7, 11; Hampton Water Works, at 10; NEES 1999, at 18.

operating expertise;⁷ (4) financial capability, including access to capital and ability to fund needed capital additions;⁸ (5) treatment of the acquisition premium;⁹ and (6) treatment of merger savings.¹⁰ “In essence, the ‘no net harm’ test requires approval of a proposed transaction if the public interest is not adversely affected.” *Re CCI Telecommunications of N.H., Inc.*, 81 NH PUC 844, 845 (1996). The Commission has stated in that regard, “our obligation is to ensure that the interests of ratepayers are balanced against the right of shareholders to be free of regulation which unreasonably restrains legitimate corporate activities.” *Re Hampton Water Works Co.*, 80 NH PUC 468, 473 (1995). “In other words, we must *assess the benefits and risks* of the proposed merger and determine what the overall effect on the public interest will be, giving the transaction our approval *if the effect is at worst neutral from the public-interest perspective.*” NEES 1999 at 16 (emphasis added).

IV. Discussion

A. The Proposed Transaction is in the Public Interest

The Proposed Transaction will transfer control of Abenaki to a company that has a high level of technical capability, operating expertise, financial strength and customer engagement, and that is fully committed to the State of New Hampshire (Supp. Test. at 15-16). Aquarion is already engaged in New Hampshire and regularly supports non-profit 501(c)(3) organizations in its service areas that promote environmental conservation and awareness, education, health, and cultural appreciation (*id.*). Aquarion has committed to retaining the NESC employees with no changes to

⁷ NEES 1999, at 17.

⁸ Aquarion 2006, at 9 (examining access to capital and ability to fund capital additions in the context of rate impacts).

⁹ Aquarion 2006, at 9; Hampton Water Works, at 12; NEES 1999, at 19, 20-21 (“even if NGG is willing to compensate NEES shareholders handsomely for the right to recover on the NEES rate base, that fact is, in itself, of no consequence to our ‘no net harm’ inquiry”).

¹⁰ Hampton Water Works, at 13 (“if Aquarion makes a successful demonstration of savings that the Commission may consider reflecting this superior performance through an increment to the otherwise determined rate of return”).

local offices and operations upon closing, which will allow for seamless integration of these employees into the Aquarion organization and a seamless service transition for Abenaki customers (id.; see also Exh. 1, at Bates 0061 and Exhs. 5, 16). The Proposed Transaction will not cause service interruptions or negative customer service impacts, and Abenaki customers will benefit from customer service and call center enhancements, which include longer call center hours and advanced technology (Supp. Test. at 17; see also Exh. 4 (describing Aquarion’s expended customer service hours and options)). Overall, Aquarion will bring greater depth and management oversight to Abenaki in terms of service personnel and resources as shown by the excellent reputation for customer service Aquarion has earned (Supp. Test. at 17 citing, the J.D. Power Overall Customer Satisfaction Index Rating).

The Commission has already determined that Aquarion possesses the necessary managerial, financial, and technical capabilities to operate Abenaki.¹¹ Aquarion is an experienced water supply and distribution operator with a strong track record of providing high-quality and cost-efficient water service to its customers, including its approximately 9,600 customers in New Hampshire (Supp. Test. at 17). If the Proposed Transaction is approved by the Commission, Abenaki customers will experience improved service under Aquarion’s ownership (id.). Aquarion will take over management responsibilities and oversee the field operations and customer-facing activities that are currently performed by NESC personnel (id. at 18).

With respect to financial capability, the Commission has found that Aquarion’s “superior financial resources will be useful to the Abenaki water companies.”¹² The benefits of this aspect of the Proposed Transaction are substantial. The tension between affordable rates and necessary

¹¹ Preliminary Order at 11 (stating that Aquarion “has demonstrated its managerial, financial, and technical capabilities to operate a utility in New Hampshire”).

¹² Preliminary Order at 11.

investments in Abenaki's systems has been a central issue in this proceeding because one of Abenaki's main challenges is the ability to fund and implement capital improvements on a consistent and cost-efficient basis due to its small size and small customer base (Supp. Test. at 18). In contrast, Aquarion is the largest investor-owned water utility in New England and among the seven largest in the United States (id.). Aquarion has revenues of approximately \$215.4 million and corporate credit ratings of A- (Stable) from Standard & Poor's ("S&P") and Baa2 (Stable) from Moody's (id.). Aquarion has ready access to the capital markets and capability to fund capital additions on the Abenaki system, which are attributes the Commission has previously considered important in its assessment of whether a transaction is in the public interest (id. citing Aquarion 2006, at 9; see also Exh. 7 (describing the lower borrowing costs that will become available to Abenaki post-closing)). Aquarion also has a systematic process for identifying and prioritizing capital improvements to meet regulatory requirements, ensure system reliability, and improve the reliability of water service, and all capital expenditures are executed with consideration for associated bill impacts including customer affordability (id. at 18-19).

In addition, the Proposed Transaction will result in near-term annual cost savings of approximately \$15,500 resulting from the elimination of NESC's board of director fees, labor-related savings due to Donald J. Vaughan's retirement,¹³ and reductions in insurance expenses (Supp. Test. at 19, citing Exh. 11 (Response to Staff 1-16); see also Exh. 15). Aquarion also anticipates future economic benefits resulting from the elimination of shareholder communications costs, lower borrowing costs due to Aquarion's superior credit ratings and utilization of debt instruments that are more sophisticated than those currently utilized by NESC, among other potential cost savings over time (Supp. Test. at 19-20). Aquarion has committed to seek approval

¹³ Mr. Vaughan is Chair of the Board and Vice President of Operations for NESC (Supp. Test. at 3).

of transaction costs only to the extent that quantifiable merger savings can be shown in a future rate case (id. at 20; see also Exh. 24).

B. The Proposed Transaction Will Not Have Any Adverse Effect on Rates

The Joint Petitioners have confirmed throughout the proceeding that there is no proposal to change the rates of Abenaki as a condition of the Proposed Transaction (Supp. Test. at 16; see also Exh. 3 and 2021 June 28 Tr. at 82). The Joint Petitioners have committed to maintain the current rates of Abenaki pending a future rate proceeding and subject to approval by the Commission. If the Transaction is approved, the Commission will retain its full authority to examine future changes in rates, terms, and conditions of service in accordance with its well-established ratemaking principles.

The Joint Petitioners have also committed not to seek recovery of any acquisition premium associated with its merger with NESC (Supp. Testimony at 19; see also Exhs. 13 and 14). This means that Abenaki customers will see no rate increase due to the acquisition. The purchase price associated with the Proposed Transaction will not be used as a basis for valuing the Abenaki water system assets in its rate base (id.). As a result, the existence of an acquisition premium should have no bearing on the Commission's public interest determination. In fact, the Commission has previously found that where a company does not seek recovery of an acquisition premium, its willingness to pay an acquisition premium is "of no consequence to our 'no net harm' inquiry." NEES 1999, at 20-21.

Notwithstanding these facts, the Final Order from the Commission's preliminary review found an adverse impact on rates based on an alleged "impaired condition" of Abenaki's assets. Final Order at 9-10. The Commission's determination was based on the proposal to carry forward existing Abenaki rate base without adjustment to account for this "impaired condition." Id. The Joint Petitioners have directly addressed this finding in their October 8, 2021 Supplemental

Testimony and the Report on System Assets submitted in Docket No. DW 20-112 on October 7, 2021.¹⁴ The Report on System Assets makes clear that no adjustment to rate base is warranted because all of Abenaki's system assets are used and useful in providing service to customers. The Joint Petitioners look forward to addressing any questions the Commission may have on this topic at the November 10, 2021 evidentiary hearing.

As discussed in the Supplemental Testimony, the age and condition of a utility's assets are already accounted for through the rate-making process (Supp. Test. at 8-10). It is expected that utility assets are "consumed" over time and the utility ratemaking process recognizes and accounts for the physical consumption of the assets over the associated useful life. The fact that the system may be comprised "in the aggregate" of older assets does not mean that the "recovery of rates" would "unfairly burden ratepayers" because the cost of older assets becomes a smaller and smaller portion of rate base over time (*id.* at 8). This is achieved through use of depreciation rates that are subject to Commission review and approval. Puc 308.08.

Thus, the rates charged at any given time are recovering the costs of assets in the condition that would be expected for the age of the assets and the rate base would hold constant when transferred from seller to buyer. Unless assets are taken out of service, the "net book value" of those assets is appropriately reflected in utility rate base (and associated customer rates) until such time that the assets are no longer "used and useful" in providing service to customers, at which time the assets are removed from the cost of service and no longer paid for by customers. As the Joint Petitioners explained in their Supplemental Testimony, depreciation expense represents the diminishing usefulness of assets over time (Supp. Test. at 12). Through application of a depreciation rate, older assets will, over time, account for a smaller and smaller portion of rate

¹⁴ The Commission has taken administrative notice of the Report on System Assets pursuant to its October 14, 2021 Procedural Order.

base (id.). This is the accepted and appropriate manner for adjusting rate base for asset condition and no further adjustment is appropriate or warranted due to a change in ownership – all remains constant, tied to the age/condition of the asset as already reflected in customer rates (which are not changing upon closing of the Proposed Transaction).

C. The Joint Petitioners Will Provide Additional Benefits

In response to the concerns raised by the Commission in the Preliminary Order and Final Order, the Joint Petitioners assessed the Proposed Transaction structure to identify several additional commitments and mitigation measures that, when coupled with the other benefits of the Transaction, will ensure that there is no potential for an adverse effect on rates (Supp. Test. at 20). The commitments include an unconditional withdrawal of the pending Abenaki rate case (Docket No. DW 20-112) and to freeze base rates for of the Abenaki systems through at least December 31, 2022 (Supp. Testimony at 20); that the next base rate filing for the Abenaki systems will be based on a test year with at least 12 months of actual cost data (on a calendar year basis) under Aquarion ownership (Supp. Testimony at 21);¹⁵ a waiver of cost recovery or rate case expense in Docket No. DW 20-112); and presentation of an analysis regarding the potential for a future corporate merger of Abenaki and Aquarion Water Company of New Hampshire (Supp. Testimony at 21).

D. Aquarion has Already had a Positive Impact on Abenaki

In anticipation of closing the Proposed Transaction and integration of Abenaki into Aquarion's operations, Aquarion has been participating in operations and planning discussions with Abenaki. Aquarion intends to "hit the ground running" when it takes ownership of Abenaki

¹⁵ The Preliminary Order found that "Aquarion's willingness to defer a rate case until a full test year of data under Aquarion's ownership and operation eliminates other potential adverse impacts presented by the pending Abenaki rate case." Preliminary Order at 11.

and NESC's other utilities. Aquarion has developed a five-year capital plan for the Abenaki system and is consulting with Abenaki on a range of operations issues on the Abenaki system (Exhibit 13, OCA TS-2-1). Aquarion is also working with Abenaki on an action plan in response to the investigation report issued by the Department of Energy's Safety Staff in Docket No. IR 21-024 regarding Abenaki's Rosebrook System (the "Report").¹⁶ In a series of responses to discovery requests issued by intervenor Omni Washington LLC, the Joint Petitioners demonstrated Aquarion's level of engagement in response to the recommendations in the Report. Abenaki's integration into the Aquarion organization post-closing will provide critical management oversight and leadership to address operational issues on the Abenaki systems going forward.¹⁷

V. Conclusion

On balance, the record evidence in this docket demonstrates that the Proposed Transaction will produce "no net harm" to Abenaki customers and provide many positive benefits. Overall, the record evidence further demonstrates that the Proposed Transaction is lawful, proper and in the public interest. The Joint Petitioners respectfully request the Commission to approve the Petition and allow the Proposed Transaction to move forward.

¹⁶ The Commission has taken administrative notice of the Report in this proceeding per its October 14, 2021 procedural order.

¹⁷ For example, the recommendation in paragraph 1 of the Report is for Abenaki to appoint a qualified independent operations and management consultant to oversee day-to-day operations for a period of 6 months. Abenaki has proposed to use Aquarion to fill this oversight role to leverage Aquarion's technical resources and experience (Response to Omni 1-001). This will also align with the integration work currently being performed in anticipation of Aquarion's ownership of Abenaki following closing of the Proposed Transaction. As a result, the objective of Safety Staff's recommendation in paragraph 1 will be achieved while also leveraging the response to efficiently transition oversight of Abenaki from NESC to Aquarion. The Joint Petitioners will submit the referenced discovery responses as hearing exhibits.

**Respectfully submitted as of November 1, 2021,
by**

AQUARION COMPANY

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Certificate of Service

I hereby certify that on November 1, 2021, a copy of this brief has been electronically forwarded to the service list in this docket.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style with a large initial 'J'.

Jessica Buno Ralston