

1 **STATE OF NEW HAMPSHIRE**
2 **PUBLIC UTILITIES COMMISSION**

3
4 **May 14, 2021 - 2:12 p.m.**

5 *[Remote Hearing conducted via Webex]*

6
7 **RE: DW 21-090**
8 **ABENAKI WATER COMPANY, INC. AND**
9 **AQUARION COMPANY: Joint Petition for**
10 **Approval of the Acquisition of Abenaki**
11 **Water Company by Aquarion Company.**
12 **(Prehearing conference)**

13
14 **PRESENT:** David K. Wiesner, Esq.
15 *(Presiding as Hearings Examiner)*

16 Jody Carmody, Clerk
17 Corrine Lemay, PUC Remote Hearing Host

18 **APPEARANCES:** **Reptg. Aquarion Company:**
19 Matthew J. Fossum, Esq.
20 Jessica B. Ralston, Esq. *(Keegan Werlin)*

21 **Reptg. Abenaki Water Company:**
22 Jennifer L. DiBella, Esq.
23 Jody Cranmore, Esq.
24 *(Cranmore FitzGerald & Meaney)*

Reptg. Bretton Woods Property Owners
 Association (BWPOA):
 Paul Mueller

 Sharon Burgess, *pro se*

Reptg. Omni Mount Washington Hotel, LLC:
 Thomas B. Getz, Esq. *(McLane Middleton)*

 Court Reporter: Steven E. Patnaude, LCR No. 52

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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:
Donald M. Kreis, Esq., Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Christopher R. Tuomala, Esq.
F. Anne Ross, Esq.
Jayson Laflamme, Asst. Dir./Gas & Water

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I N D E X

PAGE NO.

DISCUSSION RE: INTERVENTIONS

9

STATEMENTS RE: NOTICE BY:

Mr. Kreis	10, 12, 14, 15, 17	17
Mr. LaChance		11
Mr. Fossum		11, 17
Hrgs. Exam. Wiesner	12, 13, 14,	16, 17
Ms. Ross		13, 16
Mr. Getz		13, 15

QUESTIONS BY:

Hearings Examiner Wiesner	11
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STATEMENTS OF PRELIMINARY POSITION BY:

Ms. Ralston		18
Ms. DiBella		23
Mr. Mueller		25
Mr. Getz		26
Ms. Burgess		27
Mr. Kreis		29
Mr. Tuomala	34, 40,	43
Mr. Fossum		42

QUESTIONS BY:

Hearings Examiner Wiesner	35, 37, 43
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P R O C E E D I N G

HEARINGS EXAMINER WIESNER: So, we'll go on the record.

I'm David Wiesner, Director of the Legal Division at the Commission, and I'll be serving as Hearings Examiner today for the prehearing conference.

We're here this afternoon for the prehearing conference in Docket DW 21-090 regarding the Petition of Abenaki Water Company and Aquarion Company for approval of Aquarion's indirect acquisition of Abenaki or, in the alternative, for a determination that Commission approval of the acquisition is not required.

I will say, for the record, that this prehearing conference is being held through a Web-enabled remote access arrangement as directed in the Order of Notice issued May 4th, consistent with Governor Sununu's Emergency Order Number 12, due to the State of Emergency declared as a result of the COVID-19 pandemic.

Please note that there is no physical location to observe and listen contemporaneously to this prehearing conference, which is being

1 held remotely consistent with the Order of
2 Notice. I'll confirm that we're utilizing Webex
3 for this electronic prehearing conference. The
4 public has access to contemporaneously listen
5 and, if necessary, participate in the conference.
6 The Commission previously gave notice to the
7 public of the necessary information for accessing
8 the prehearing conference in the Order of Notice.

9 If anyone has a problem during the
10 prehearing conference, please call (603)271-2431.
11 In the event the public is unable to access the
12 conference, the conference will be adjourned and
13 rescheduled.

14 Why don't we begin by taking
15 appearances from the Joint Petitioners, OCA, and
16 Staff, and then we'll turn to prospective
17 intervenors. A number of individuals have
18 expressed interest in intervening in this docket,
19 but I'm not seeing them on the screen.

20 But why don't we begin with the
21 parties, OCA, and Staff in any event. So, I
22 don't know who wants to kick it off? Mr. Fossum,
23 I'll turn to you.

24 MR. FOSSUM: Well, thank you. I

1 suppose, then, I'll kick it off.

2 Matthew Fossum, here on behalf of
3 Aquarion -- excuse me -- on behalf of Aquarion
4 Company. Also representing Aquarion today is
5 Jessica Ralston, of the law firm Keegan Werlin.
6 And here on behalf of Aquarion, we also have Mr.
7 Donald Morrissey and Ms. Debra Szabo.

8 HEARINGS EXAMINER WIESNER: Thank you.
9 And who do we have for Abenaki?

10 MS. DiBELLA: Hi. This is Jennifer
11 DiBella, on behalf of Abenaki, legal counsel.
12 I'm from the law firm of Cranmore, FitzGerald &
13 Meaney. We also have --

14 HEARINGS EXAMINER WIESNER: And for --
15 sorry.

16 MS. DiBELLA: We also have Jody
17 Cranmore, from Cranmore, FitzGerald & Meaney as
18 well, on behalf of Abenaki.

19 HEARINGS EXAMINER WIESNER: And for the
20 Consumer Advocate.

21 MR. KREIS: Good afternoon,
22 Mr. Presiding Officer. I am Donald Kreis, the
23 Consumer Advocate, here, as everybody I think
24 knows, on behalf of residential utility

1 customers.

2 HEARINGS EXAMINER WIESNER: And for
3 Commission Staff.

4 MR. TUOMALA: Good afternoon.
5 Christopher Tuomala, Attorney for the Staff of
6 the New Hampshire Public Utilities Commission.
7 With me today is fellow counsel, Anne Ross, and
8 the Assistant Director of the Gas and Water
9 Division, Jayson Laflamme.

10 HEARINGS EXAMINER WIESNER: And I see
11 two intervenors or prospective intervenors on the
12 screen. Why don't we turn to them. Mr. Mueller,
13 if you would speak on behalf of the Association.

14 MR. MUELLER: Sure. I'm Paul Mueller.
15 And I represent Bretton Woods Property Owners
16 Association.

17 HEARINGS EXAMINER WIESNER: And I see
18 an old friend, Mr. Getz. Tom, I think you're on
19 mute.

20 MR. GETZ: Thank you. Good afternoon,
21 Mr. Wiesner. I'm Tom Getz, from the law firm of
22 McLane Middleton. I am here on behalf of Omni
23 Mount Washington. Josh DeBottis, the General
24 Manager of the Omni Mount Washington, I think is

1 having some problems contacting. And I suggested
2 that he call the number that you gave. And I
3 believe Mr. Ellms, the Director of Operations, is
4 on the screen.

5 HEARINGS EXAMINER WIESNER: Okay.
6 Thank you.

7 And I do see Ms. Burgess. Would you
8 care to enter your appearance, Ms. Burgess?

9 MS. BURGESS: Sure. I'm Sharon
10 Burgess, resident, White Rock -- White Rock
11 Water, that's a mouthful, in Bow, New Hampshire,
12 here as an intervenor and ratepayer.

13 HEARINGS EXAMINER WIESNER: And I'll
14 just -- I'll just circle back to Mr. Getz. I
15 don't believe Omni has filed a petition to
16 intervene. Do you intend to do that?

17 MR. GETZ: That's correct. We will
18 request intervention orally, when we have the
19 opportunity to make the preliminary statement of
20 opinion -- of our position.

21 HEARINGS EXAMINER WIESNER: Okay. And,
22 as I noted before, a number of individuals
23 expressed interest in intervening. Many of them
24 I believe are intervenors in the Abenaki rate

1 case. And we can run through a list of those.

2 I guess I'm wondering, and we
3 haven't -- excuse me -- haven't heard from Omni
4 yet as to its basis for intervention, but they
5 have intervened in a number of matters involving
6 Abenaki in the past. I'm wondering if there are
7 any objections that anyone wants to raise at this
8 point for the requests for intervention?

9 MR. FOSSUM: This is Matthew Fossum.
10 On behalf of Aquarion, I will say we don't have
11 any objections. But our only request would be,
12 to the extent that there's a significant number
13 of intervenors who may have similar or aligned
14 interests, that the Commission look to perhaps
15 consolidate their participation for sort of
16 administrative ease.

17 So, I guess that would be our request.

18 HEARINGS EXAMINER WIESNER: And it's my
19 understanding that a model similar to that was
20 adopted in the Abenaki rate case, where a number
21 of individual ratepayers for each of the
22 respective systems, in particular, Bow and
23 Belmont, were intending to pool their resources
24 and speak through a single representative. And I

1 might suggest that that would be an appropriate
2 model for this docket as well. I'll leave it to
3 Staff counsel and others to work with those
4 intervenors to try to make those arrangements, as
5 that will streamline the process from the
6 Commission's perspective.

7 So, with that, why don't we -- why
8 don't we move forward and hear initial positions
9 of the parties. And, again, I'll turn to the
10 Joint Petitioners.

11 MR. KREIS: Mr. Presiding Officer,
12 before you do that, I would like to raise a
13 preliminary matter.

14 I am concerned about the adequacy of
15 notice with respect to this proceeding. And I
16 say that because my phone and in-box have been
17 flooded with messages over the last several days
18 from various, I guess, customers of Abenaki who
19 are quite concerned about this proceeding. I am
20 not certain that they were aware that this docket
21 had been opened, and that there was an
22 opportunity to intervene, until I sent an email
23 around yesterday evening, personally, to every
24 intervenor whose email address I happen to have

1 from the rate case docket, and said "Hey, you
2 know, the intervention deadline has already
3 passed, but I think you should consider making a
4 request for intervenor status." And several,
5 perhaps even quite a few of them, did.

6 In the meantime, the Commission's Order
7 of Notice directed the Petitioners to publish
8 notice of this proceeding. And I don't know if
9 that happened.

10 HEARINGS EXAMINER WIESNER: Can
11 Aquarion and Abenaki speak to the issue of
12 notice, and whether the Order of Notice was
13 posted on their websites within the appropriate
14 time limits?

15 MR. LaCHANCE: This is Nick LaChance,
16 with Abenaki Water. The notice was published on
17 Abenaki's website the day it was received.

18 MR. FOSSUM: And, likewise, it was
19 published on Aquarion's website as required as
20 well.

21 HEARINGS EXAMINER WIESNER: And my
22 understanding is it was published on the PUC
23 website. Ms. Ross, do you have any further
24 information about that? Or Mr. Tuomala?

1 MS. ROSS: I don't. Chris, did you
2 check to see if it was up on the website?

3 MR. TUOMALA: I did not verify that.

4 HEARINGS EXAMINER WIESNER: And I
5 suspect that this is a case, particularly with
6 the number of individual ratepayers, where late
7 interventions would be entertained, unless
8 there's a strong objection on the basis of a
9 person's standing.

10 MR. KREIS: Well, I just want to state
11 for the record that it is not the responsibility
12 of the Consumer Advocate to put the word or
13 customers on notice of the pendency of important
14 proceedings. And I am very concerned here. It
15 seems to me that the Commission and the
16 Petitioners both have email addresses from any
17 number of parties that they know to be interested
18 in this proceeding. And it would have been very
19 simple for the Company, for Abenaki, to put all
20 of its customers on notice of this, and I don't
21 think they have done that.

22 And I'm here, obviously. I get notice
23 of everything the Commission does. But I'm very
24 concerned about this.

1 MS. ROSS: I can just verify that I
2 just checked the Commission website, and the
3 Order of Notice is on the home page of the
4 website. And the date on it is May 10th. So, it
5 appears that it was -- that it was published on
6 May 10th on the Commission website.

7 MR. GETZ: Mr. Wiesner, I think I can
8 speak to that issue somewhat.

9 I was speaking on Wednesday, May 12th,
10 looking for the -- checking the docketbook in
11 this proceeding. The Order of Notice was not on
12 the front page of the Commission's website that
13 morning, and it appeared later in the day, on the
14 front page.

15 When it actually showed up in, you
16 know, the particular docketbook, I have no idea.

17 HEARINGS EXAMINER WIESNER: Right. And
18 my understanding is that it's actually published
19 in two or three places on the Commission website,
20 both in the actual docket and then there's
21 another tab for "Orders of Notice". And then,
22 there's the front page, which is something we
23 started doing this year, I believe, or late last
24 year, putting those Orders of Notice on the front

1 page as well.

2 I guess I'm not entirely clear whether
3 Attorney Kreis is arguing that there's a notice
4 infirmity for this docket or raising an issue
5 that we would consider for future dockets?

6 MR. KREIS: I am arguing that there was
7 a notice infirmity. If the Order of Notice went
8 up on the Commission's website on May 12th, well,
9 that was actually a day after the intervention
10 deadline in the Order of Notice. That is not the
11 way this is supposed to work.

12 And, you know, again, I'm here. But I
13 know, because I hear from them, that there are
14 dozens, if not more, customers of Abenaki who are
15 extremely concerned about this transaction and
16 are inclined to oppose it. And I'm concerned
17 that they have not been adequately noticed with
18 respect to the pendency of this docket.

19 HEARINGS EXAMINER WIESNER: I believe
20 the Order of Notice was published on the day it
21 was issued on the Commission's website. It may
22 not have made it to the front page until a few
23 days later.

24 But I think my thought would be that

1 doesn't constitute an infirmity in notice, given
2 the direction in the Order of Notice for website
3 publishing. Now, whether website publishing
4 reaches the level of individual ratepayers is a
5 separate question.

6 I guess, you know, I'm inclined to
7 think that we should proceed today, and that you
8 should have a tech session with whoever is
9 available, and try to reach out and coordinate
10 with the other individual ratepayers from the
11 various systems who are interested in this
12 matter.

13 MR. KREIS: Well, --

14 MR. GETZ: Omni has no objection to
15 that.

16 MR. KREIS: -- this docket, at least
17 according to the Petitioners, is on an extremely
18 short statutory leash. And, so, at the very
19 least, I reserve the right to pop up, if I
20 discover that there are substantial numbers of
21 people who simply were not on notice of this
22 thing, to say that the clock is going to have to
23 be reset here.

24 I don't have any objection to moving

1 forward today. I'm certainly prepared to state
2 an initial position, and to participate in the
3 technical session.

4 HEARINGS EXAMINER WIESNER: And I think
5 that's probably the best course of action for
6 today. And, then, again, then try to include the
7 other intervenors in future sessions or in
8 constructing a procedural schedule which works
9 for all, again, subject to my entreaty that the
10 individual ratepayers try to organize themselves
11 and collaborate through common interests and
12 common representation. I think there's been some
13 success in that model in the rate case. And it
14 probably makes sense to replicate that here.

15 MS. ROSS: I would just suggest to have
16 one additional supplemental notice, that might be
17 an easy one to do, would be to forward the Order
18 of Notice and any procedural schedule that's
19 agreed on to the two rate case service lists.

20 Because Aquarion is currently in the
21 process of a rate case, and Abenaki is as well.
22 And I think both of those cases involve a number
23 of customer intervenors.

24 HEARINGS EXAMINER WIESNER: That seems

1 like a helpful suggestion.

2 Attorney Kreis, do you have a reaction
3 to that?

4 MR. KREIS: I would like to thank
5 Ms. Ross for making an excellent suggestion.

6 HEARINGS EXAMINER WIESNER: I will
7 recommend that in my report, and we will --

8 MR. FOSSUM: Well, to that point, if
9 we're discussing that issue. Just for clarity,
10 the Aquarion rate case is for Aquarion Water
11 Company of New Hampshire, which is not a party to
12 the transaction that we're looking at in this
13 docket. So, notice there is not -- I guess I
14 don't much see the overlap. It's a separate
15 corporate entity and a separate issue altogether.
16 This is a parent company issue.

17 MR. KREIS: Yes. I'm afraid I would
18 have to respectfully disagree with that
19 contention. It's very clear that, at the end of
20 this rainbow, Abenaki at least becomes part of
21 Aquarion New Hampshire, at least to some degree.
22 And that has the potential to have a great deal
23 of impact on Aquarion's customers.

24 HEARINGS EXAMINER WIESNER: And I'm

1 going to suggest that the Order of Notice be
2 forwarded per Attorney Ross's suggestion, to the
3 service lists for both rate cases.

4 If someone seeks to intervene as a
5 participant in the Aquarion rate case, and
6 there's a basis for objecting to that, by any
7 party, including Aquarion, that could -- that
8 objection could be made at that time.

9 Any other preliminary or procedural
10 matters that we should address, before we get
11 into the meat?

12 *[No verbal response.]*

13 HEARINGS EXAMINER WIESNER: Okay.
14 Hearing none. I'll ask, again, the Joint
15 Petitioners to provide their initial statement,
16 either jointly or in series.

17 MS. RALSTON: Thank you. Jessica
18 Ralston, on behalf of Aquarion Company.

19 The Commission initiated this docket in
20 response to the Joint Petition of Abenaki Water
21 Company and Aquarion Company filed on April 30th
22 of 2021. The Joint Petition asks the Commission
23 to approve Aquarion's acquisition of Abenaki; or,
24 alternatively, --

1 *[Court reporter interruption due to*
2 *audio issues.]*

3 MS. RALSTON: The Joint Petition asks
4 the Commission to approve Aquarion's acquisition
5 of Abenaki; or, alternatively, to determine that
6 approval is not required because the transaction
7 will not have an adverse effect on rates, terms
8 of service, or operation of Abenaki.

9 In the transaction, Aquarion Company,
10 the parent of Aquarion Water Company of New
11 Hampshire, will acquire Abenaki's parent company,
12 New England Service Company, through a merger
13 that will result in NESC becoming a direct
14 wholly-owned subsidiary of Aquarion, and Abenaki
15 becoming an indirect wholly-owned subsidiary of
16 Aquarion. No other changes are proposed to
17 Abenaki's rates, terms, service, or operations.

18 As explained in the Petition, the
19 transaction will result in no net harm to
20 Abenaki's customers, and, in fact, it will be
21 beneficial to Abenaki's customers through service
22 by an organization that has greater financial
23 strength, broad operating experience, and
24 substantial technical capabilities and resources.

1 The Petition provides more details on
2 the transaction, but I will highlight a few of
3 the key points.

4 First, as I noted, after the
5 transaction closing, Abenaki will be a
6 wholly-owned subsidiary of Aquarion, and will
7 continue to operate as a regulated water utility
8 subject to the Commission's jurisdiction. The
9 Joint Petitioners are not proposing any changes
10 to rates or other terms of service for Abenaki
11 customers as a result of this transaction. Rates
12 will remain at current levels unless and until a
13 change in those rates is authorized by the
14 Commission in Abenaki's pending rate case, Docket
15 DW 20-112, or in another future proceeding.

16 Abenaki customers will benefit from the
17 transaction because it will maintain local
18 control by a company with strong ties and a
19 longstanding commitment to New Hampshire.
20 Aquarion is experienced in the New Hampshire
21 regulatory environment, and understands the
22 customer base, and it is fully engaged in meeting
23 the water supply needs of customers and
24 communities throughout its service territories.

1 Abenaki customers will also benefit
2 economically from the transaction because it will
3 lead to cost reductions in several areas, such as
4 administrative costs, elimination of the NESC
5 Board of Directors' fees, and reductions in
6 annual insurance costs.

7 Over time, the transaction will also
8 enable Abenaki to reduce expenses for shareholder
9 communications, as well as lower borrowing costs
10 due to Aquarion's superior credit ratings and
11 utilization of debt instruments that are more
12 sophisticated than those currently utilized by
13 NESC. The cost savings are expected to develop
14 over time.

15 Aquarion's capabilities will ensure
16 that Abenaki customers will continue to receive
17 high-quality service in a cost-efficient manner.
18 In addition, to ensure continuity of service and
19 uninterrupted operations, Aquarion has agreed to
20 retain all of NESC employees that collectively
21 support its operations. Three of its employees
22 are based in New Hampshire, and will continue to
23 be based in New Hampshire after closing.
24 Retention of these employees, as well as

1 Abenaki's facilities in Gilford, New Hampshire,
2 will allow for seamless service to Abenaki's
3 customers after the transaction.

4 The lone exception is Mr. Donald
5 Vaughan, NESC's Vice President of Operations and
6 Chairman of Board, who is electing to retire and
7 will not join Aquarion upon closing.

8 The transaction will also benefit NESC
9 employees, including those based in New
10 Hampshire. Under the terms of the agreement,
11 NESC employees will be provided with compensation
12 and benefits that are, in the aggregate,
13 substantially comparable to their compensation
14 and benefits provided by NESC immediately prior
15 to the transaction.

16 NESC employees will also benefit from
17 greater opportunities for training, for
18 development, and for professional advancement as
19 part of Aquarion.

20 So, in conclusion, we thank the
21 Commission for its attention to this filing
22 today. And we respectfully request approval of
23 Aquarion's acquisition of Abenaki; or,
24 alternatively, a determination that approval is

1 not required because the transaction will not
2 have an adverse effect on rates, terms of
3 service, or the operations of Abenaki.

4 Thank you.

5 HEARINGS EXAMINER WIESNER: Thank you,
6 Attorney Ralston. Did Abenaki want to make a
7 separate statement of its opening position?

8 MS. DiBELLA: Yes. This is Jennifer
9 DiBella, on behalf of Abenaki. And we have an
10 opening statement as well. Thank you.

11 Abenaki Water Company appreciates the
12 opportunity to speak to you all today, and
13 strongly supports the preliminary statement
14 provided by counsel for Aquarion Company.

15 Abenaki currently provides water
16 distribution services to approximately 720 water
17 customers in Bretton Woods, Bow, Gilford, and
18 Belmont, New Hampshire, and 158 sewer customers
19 in Belmont, New Hampshire. The rates, terms, and
20 conditions of service to these customers will not
21 change or be adversely affected by this
22 transaction.

23 As the Commission is aware, Abenaki has
24 a pending rate case before the Commission

1 docketed as DW 20-112. As noted by counsel for
2 Aquarion, Abenaki's rates will remain at current
3 levels, unless and until a change in those rates
4 is authorized by the Commission in that docket.

5 Overall, Abenaki is pleased to be
6 joining the Aquarion organization. Abenaki looks
7 forward to continuing to provide high-quality
8 service to its customers, and, in particular, to
9 the benefits to its customers and employees made
10 possible by this transaction.

11 We expect the transaction will be
12 seamless to customers, due to Aquarion's
13 substantial experience in water system
14 distribution, acquisitions, and operations, as
15 well as Aquarion's plan to retain all of NESCE's
16 employees and facilities in Gilford, New
17 Hampshire, as part of the transaction.

18 Abenaki believes Aquarion is well
19 positioned to deliver the reliable, high-quality
20 water service that Abenaki's customers expect.
21 Abenaki views this transaction with Aquarion as a
22 win for all customers, employees, and all
23 stakeholders.

24 For these reasons, Abenaki supports the

1 request for Commission approval of the
2 acquisition of Abenaki Water Company by Aquarion
3 Company, as well as the request for a
4 determination that the approval is not required,
5 because the transaction will not have an adverse
6 effect on rates, terms, service, or operations of
7 Abenaki.

8 Thank you.

9 HEARINGS EXAMINER WIESNER: Thank you.
10 And why don't we hear from the intervenors now.
11 I'll turn to Mr. Mueller first.

12 MR. MUELLER: Thank you. My reason for
13 requesting intervenor status was more along the
14 lines of what happens -- concern about what
15 happens to ongoing proceedings as a result of
16 this proposed transaction.

17 For example, in Bretton Woods, there's
18 currently a DES Significant Deficiency letter
19 outstanding, and there's also a PUC investigation
20 into Abenaki, as well as a rate case proceeding
21 and a tariff case proceeding.

22 So, my concern is what happens to those
23 proceedings, if anything, as a result of this
24 proposed transaction?

1 HEARINGS EXAMINER WIESNER: Okay.

2 Thank you. And, Mr. Getz, do you want to speak
3 for Omni?

4 MR. GETZ: Yes. Thank you,
5 Mr. Wiesner.

6 Omni is a customer of the Abenaki
7 Rosebrook water system. And, as the Commission
8 is well aware, Omni has expressed concerns about
9 Abenaki's operation of the system in other
10 proceedings. In that regard, Omni would be
11 pleased to see Abenaki acquired by a more
12 responsible water system operator. At the same
13 time, Omni seeks to understand the basis for and
14 be comfortable with Aquarion's statement that its
15 acquisition of Abenaki will not adversely effect
16 rates, terms, services, or operations of
17 Rosebrook.

18 And, finally, Omni asks that the
19 Commission grant late intervention to Omni. Omni
20 understands that the Order of Notice was issued
21 on May 4, setting a deadline for intervention on
22 May 11. But Omni only became aware of the Order
23 of Notice on May 12, after I had discovered it in
24 the docketbook listing for this proceeding.

1 Accordingly, Omni asks that the
2 Commission find that it's in the interest of
3 justice to grant intervention, and that granting
4 such intervention would not impair the prompt and
5 orderly conduct of the proceeding.

6 Finally, Omni is prepared to coordinate
7 with Mr. Mueller and the homeowner associations
8 to -- in representation of the customers of the
9 Rosebrook system.

10 Thank you.

11 HEARINGS EXAMINER WIESNER: That's
12 helpful. Thank you.

13 And, Ms. Burgess, did you want to make
14 an opening statement?

15 MS. BURGESS: Yes. I'll be very quick
16 with it.

17 Basically, similarly concerned with
18 what happens with the current proceeding rate
19 case, and also very concerned about the statement
20 of "no harm" that's mentioned for this
21 proceeding. And with no rate changes due and no
22 impacts on service, rate, or terms, yet there are
23 many service issues right now. And we would want
24 to be ensured of how they can say "no service

1 changes", when, in fact, there are many service
2 changes that are detailed and necessary.

3 HEARINGS EXAMINER WIESNER: Okay.

4 Thank you.

5 And I understand we do not have any
6 public commenters, is that correct?

7 MS. CARMODY: As far as I can see,
8 nobody has decided to come forward. If they
9 have, they haven't let us know.

10 HEARINGS EXAMINER WIESNER: Okay.

11 Thank you for that.

12 So, I will recommend that all of the
13 requests for intervention be granted. I believe
14 some of them should be documented through formal
15 filings with the Commission, which do not have
16 to, for individuals in particular, do not have to
17 be anything lengthy. A brief one-page statement
18 of a person's interest as a ratepayer is
19 sufficient. And there are models for those
20 filings in the Abenaki rate case, where a number
21 of folks filed a one-page document, with basic
22 information and stating their interest as a
23 ratepayer of a particular system under the
24 Abenaki umbrella.

1 Until such time as those interventions
2 are granted, the prospective intervenors will be
3 treated as parties for purposes of your tech
4 session and developing a procedural schedule,
5 which is common practice here at the Commission.

6 And I think that's about all I have to
7 cover. I will also make the recommendation
8 regarding supplemental notice to the service
9 lists for those -- for the two rate cases for the
10 two companies, or, in one case, the New Hampshire
11 subsidiary of the parent company.

12 MR. KREIS: Mr. Presiding Officer, the
13 Office of the Consumer Advocate would like an
14 opportunity to make an opening statement of its
15 position, if that would be okay?

16 HEARINGS EXAMINER WIESNER: I
17 apologize. I did not mean to cut you off, or
18 Staff either. Go ahead.

19 MR. KREIS: Okay. Paragraph II of RSA
20 369:8 describes certain circumstances in which
21 the Commission's approval of the acquisition of a
22 New Hampshire utility is not required. But this
23 is not such a situation. To avoid full PUC
24 scrutiny, the utility in question must submit a

1 "detailed representation" demonstrating that the
2 transaction "will not adversely affect rates,
3 terms, service, or operation of the public
4 utility within the state."

5 Well, what we have here is a filing
6 that has lots and lots of adjectives in it, two
7 references to the "relentless pursuit of
8 excellence", and a veritable cornucopia of vague
9 promises and conclusory assertions. What we also
10 have here is a situation that I think is almost
11 certainly unprecedented. That is to say, a
12 utility seeking permission to sell itself to a
13 new owner smack in the middle of a rate case.

14 In my respectful opinion, given that
15 the Commission has yet to determine what rates
16 are just and reasonable for Abenaki, right now
17 the Company is operating under temporary rates,
18 there is simply no way for the Commission to make
19 the "no adverse impact" finding required by RSA
20 369:8, II.

21 It is, therefore, the emphatic position
22 of the OCA that the Commission must invoke the
23 language in Subparagraph (b)(1) of that statute.
24 In other words, Abenaki cannot meet its burden of

1 demonstrating no adverse effect, and thus the
2 case metamorphoses, I guess, to a traditional
3 public interest proceeding under RSA 374:33.

4 This is probably the right time to
5 interject our contention that, to gain approval
6 of this transaction, Abenaki must demonstrate
7 that the sale to Aquarion or that the sale to
8 Aquarion and Eversource will have net benefits to
9 ratepayers. I realize that, in certain other
10 contexts, the Commission has applied a "no net
11 harm" standard. But I have two things to say
12 about that.

13 One, the Commission is not bound by its
14 own precedents, especially ones that date from
15 something like two decades ago or more. And the
16 New Hampshire Supreme Court has never had an
17 occasion to interpret RSA 369:8 or to opine on
18 the "no net harm" standard.

19 My second point is the Commission's
20 application of the "no net harm" test, in the
21 *Hampton Water Works* decision of 1991, clearly
22 suggests that, even as a matter of PUC
23 president -- precedent, that is, "no net harm" is
24 hardly a rubber stamp. I'm referring to Order

1 Number 23,924, that was issued in 2002 in Docket
2 DW 01-215, and it happens to be cited at Page 6
3 of the Petition.

4 What the Petitioners didn't bother to
5 share is the language in that order stating, and
6 I quote, "a petitioner's representations of no
7 adverse effect...though a facial satisfaction of
8 RSA 369:8, II, is not enough to warrant approval
9 of a merger transaction."

10 "We conclude", said Commissioners Getz,
11 Geiger, and Brockway, that "we are vested with
12 both the power and the obligation to conduct an
13 inquiry to verify the representations made by the
14 Petitioners." You, the current PUC, have that
15 power and that obligation.

16 Even if there were no rate case
17 pending, this would still be a unique situation.
18 Abenaki Water Company is by far the smallest of
19 the three utility subsidiaries of New England
20 Service Company that Aquarion is seeking to
21 purchase. Abenaki itself is a balkanized set of
22 individual water systems. The Company's
23 Rosebrook Division has a terrible history in
24 particular, and it is an ongoing tale of conflict

1 with a major customer that comprises the bulk of
2 its sales.

3 Unlike the other two operating
4 companies of New England Service Company, Abenaki
5 will not apparently be absorbed into Aquarion,
6 according to the merger plan described in the
7 Petition. This situation is fraught with peril
8 for the residential customers of Abenaki in New
9 Hampshire.

10 There is every reason to suppose that
11 these customers will get the worst of both
12 worlds. They would become an even more
13 insignificant slice of an even bigger utility
14 empire. They'll have to pay their share of the
15 overhead costs of such a bigger and more complex
16 organization. But they will still be part of a
17 bunch of disconnected systems and separate rates,
18 and not really part of the Aquarion system at
19 all. There's not even a hint of the possibility
20 of consolidated rates in the future.

21 Now, I'm not here to condemn this
22 proposed transaction. I'm just here to say that
23 the Commission must conduct a full inquiry,
24 because what has been filed here falls well short

1 of the automatic approval standard of "no adverse
2 impacts".

3 That said, I look forward to working
4 with the parties. I intend to participate
5 robustly and fully in the technical session. And
6 I'm sure that we will bring this docket to a
7 successful conclusion in due course.

8 Thank you, Mr. Presiding Officer.

9 HEARINGS EXAMINER WIESNER: Thank you,
10 Attorney Kreis. And Mr. Tuomala.

11 MR. TUOMALA: Thank you, Mr. Presiding
12 Officer. I have a few preliminary matters.

13 One, I just wanted to state for the
14 record that, during this prehearing conference, a
15 number of us received an email from Cristy
16 Bresson, who had filed a Petition for
17 Intervention, saying she was having technical
18 difficulties getting on this call. She has a
19 work meeting at 2:30, and she will try to get
20 back on to this if the work meeting wraps up
21 shortly.

22 And another request, this is
23 preliminary matter for intervention, the Hearings
24 Officer requested that the petitions for

1 intervention be followed up with a one-page
2 statement from those petitions that aren't deemed
3 as an official filing. I would ask the Hearings
4 Examiner to possibly consider waiving that, if
5 the Companies, Aquarion and Abenaki, agree that,
6 to my count, there's about 17 pending petitions
7 for intervention, or some form thereof, at least
8 a notification by some of these ratepayers.

9 Given the tight timeline, I would think that, if,
10 on the record, Aquarion and Abenaki don't object
11 to those petitions for intervention in various
12 form or another, you could find that, through RSA
13 541-A:37, that the parties have waived their
14 rights to written notification three days before
15 the hearing.

16 So, I would respectfully submit, since
17 we have a tight deadline, following up for some
18 of these *pro se* intervenors to officially file
19 might be difficult. And I think, in the interest
20 of time, we would just accept those emails and
21 petitions for intervention as a request for
22 intervention, and move on from there, provided
23 that no parties object to that.

24 HEARINGS EXAMINER WIESNER: Attorney

1 Tuomala, were those email requests sent to the
2 full service list, including the Joint
3 Petitioners and Consumer Advocate?

4 MR. TUOMALA: That is a good point. I
5 made some notes. And I cannot verify that all of
6 them have been. It seems that a majority of the
7 petitions have. Mr. Mueller's has not, but he is
8 here today, and everybody, for the record, knows
9 that he has requested intervention.

10 And if you bear with me for a minute, I
11 think that that is it, in terms of emails that
12 weren't circulated to the entire service list.

13 HEARINGS EXAMINER WIESNER: And it's my
14 understanding that the other individual
15 prospective intervenors are ratepayers of
16 Abenaki, who are also participating in the rate
17 case. Is that correct?

18 MR. TUOMALA: Yes. That's correct. If
19 you divide it amongst the five water systems,
20 there are number of Tioga Belmont customers and a
21 number of Bow customers. And they all overlap
22 with the interventions requested in DW 20-112,
23 which is the Abenaki rate case. They're not all
24 the intervenors from that rate case, but they do

1 comprise some of those intervenors in that rate
2 case, and they are all ratepayers of Abenaki.

3 HEARINGS EXAMINER WIESNER: Would there
4 be any objection to a recommendation to the
5 Commissioners, and it's their decision
6 ultimately, to permit the sort of informal email
7 indications of interest in intervention, as
8 opposed to formal filings?

9 MR. KREIS: No objection from the
10 Consumer Advocate.

11 HEARINGS EXAMINER WIESNER: And none
12 from --

13 MR. FOSSUM: I don't think Aquarion has
14 any objection. I guess, I mean, if we've gotten
15 down to the point where we're just accepting
16 emails as sufficient from people to intervene, I
17 guess I would revisit this -- the issue of
18 notice. I mean, it seems like a goodly number of
19 customers have gotten notice, and now we're
20 essentially going to allow them to intervene by
21 sending in an email. You know, I'm not --

22 MR. KREIS: Well, they got notice from
23 me, Mr. Fossum, me, the Office of the Consumer
24 Advocate.

1 MR. FOSSUM: However -- well, however
2 it happened, I suppose, you know, that's -- it is
3 what it is. You know, we complied with the
4 notice requirement that the Commission delivered
5 upon us. We have done what we were supposed to
6 do.

7 So, the fact that you emailed them,
8 that's interesting. It doesn't change -- you
9 know, we didn't do anything wrong, I guess is
10 what I'm getting at. These people now know. And
11 they are intervening. And they are intervening
12 by sending an email and doing nothing else. That
13 seems to me like we've sort of -- we've crossed a
14 threshold, where customers are being allowed in
15 to participate in this case, and that's fine.

16 But, then, reissuing notice and
17 allowing more customers to come in with more
18 emails, or however it may happen, I mean, it
19 seems like it's just going to prolong this case.
20 It's going to make it more complicated, more
21 difficult to resolve.

22 MR. KREIS: Well, could I just say
23 that, in addition to notifying a bunch of people
24 about this, I also sent them a intervention

1 petition template that I have in my files for
2 that purpose. I'd be happy to send that template
3 to anybody else who wants it. And I don't mind,
4 if it's more appropriate to require prospective
5 intervenors to not really jump through the hoop,
6 but go through the actual required formality. It
7 is in the statute after all, that you are
8 supposed to petition for intervention status.

9 So, I have some sympathy for the
10 Company's perspective -- or, for the perspective
11 that Mr. Fossum just articulated on behalf of
12 Aquarion.

13 HEARINGS EXAMINER WIESNER: I do think
14 it's better, in general, for the record to have a
15 written submission by prospective intervenors.
16 And it needn't be anything extensive. The form
17 that some of the intervenors in this docket have
18 filed or many of the ratepayers in the rate case
19 docket filed is perfectly sufficient, was
20 accepted in that other docket.

21 So, I guess I would then not recommend
22 that there be a waiver of the need for a formal
23 filing. And maybe, you know, between the OCA and
24 Staff, if there's an opportunity to do so, follow

1 up with those folks and ask them to file
2 something within the next week, if possible.

3 Is there anything else we should cover
4 today?

5 MR. TUOMALA: I have a few things,
6 Mr. Hearings Examiner.

7 HEARINGS EXAMINER WIESNER: You have
8 your -- I keep cutting people off. I apologize.

9 MR. TUOMALA: Yes.

10 HEARINGS EXAMINER WIESNER: Go ahead.

11 MR. TUOMALA: I guess you are tired of
12 listening to me already.

13 HEARINGS EXAMINER WIESNER: Uh-huh.

14 MR. TUOMALA: Okay. So, as a
15 preliminary preliminary matter, I wanted to
16 address the request of the Company. And we've
17 heard from both sides. This is an acquisition of
18 parent companies. NESC being the owner of
19 Abenaki, which is the respective utility in New
20 Hampshire. Part of their request is approval, or
21 at least the Commission saying that they don't
22 need their approval, because of the standards of
23 369:8, II. And we recognize that 369:8, II, has
24 a number of very tight, strict deadlines.

1 One of which is sixty days right now
2 for the Commission to make a preliminary
3 determination in this case, that the merger or
4 acquisition will have an adverse effect on rates,
5 terms, service, or operation. And that's
6 pursuant to RSA 369:8, II(b)(3) and (b)(4).

7 According to the docket, the initial
8 filing was made on April 30th. And the
9 Petitioners followed up on May 10th with a
10 supplemental filing, and included, among other
11 things, the disclosure schedules for the
12 Agreement and Plan of Merger that was included in
13 its April 30th filing. So, the preliminary
14 matters that Staff would want to address is the
15 beginning of that sixty-day clock.

16 Staff is making the argument that the
17 April 30th filing was not a completed filing, and
18 therefore not a "detailed representation", which
19 is required by 369:8, II(a) or (b)(1). Staff
20 argues at such time the provisions -- the time
21 provisions of 369:8, II, were triggered, at the
22 earliest, on May 10th, with their follow-up
23 filing, which included schedules that were to be
24 included in that original Plan of Merger and

1 Acquisition.

2 Staff supports this argument by noting
3 a prior case, Order Number 23,367, and this is
4 back in 1999, in which the Commission deemed a
5 filing incomplete based upon missing supporting
6 documentations and schedules pertaining to
7 alleged savings referenced and an absent plan of
8 agreement and merger. The Commission found the
9 filing incomplete in that case. And the
10 Commission in doing so stated that the "tight
11 timelines of RSA 369:8 were not triggered."

12 Staff would argue that this is a
13 similar situation in this case, that the tight
14 timelines of 369:8 aren't triggered until, again,
15 at the earliest, would be May 10th, with their
16 supplemental filing.

17 HEARINGS EXAMINER WIESNER: Before we
18 move on from that point, do the Joint Petitioners
19 want to respond to that argument of Staff?

20 MR. FOSSUM: Suppose I would offer --
21 this is, for the record, Matthew Fossum for
22 Aquarion. I would offer that, you know, we don't
23 necessarily agree that the initial filing was
24 incomplete or was not detailed as required by the

1 statute.

2 But, regardless, I don't think we have
3 any objection to starting the clock, so to speak,
4 as of the 10th of May.

5 HEARINGS EXAMINER WIESNER: And does
6 Abenaki share that view?

7 MS. DiBELLA: Yes, we do.

8 HEARINGS EXAMINER WIESNER: Any
9 other -- anyone else want to weigh in on that
10 point?

11 *[No verbal response.]*

12 HEARINGS EXAMINER WIESNER: Okay. I'll
13 recommend that as well. Attorney Tuomala, back
14 to you.

15 MR. TUOMALA: Sure. Thank you for
16 that. And, for the record, by Staff's
17 calculation, if the clock begins at the earliest
18 of May 10th, we would be looking at a sixty-day
19 conclusion of July 9th, 2021, for that
20 preliminary determination to be issued by the
21 Commission. And I appreciate that.

22 Next, as for the proposed acquisition,
23 Staff has not yet fully developed its position of
24 the issues in this docket. But believe, as

1 another preliminary matter, that the Petition
2 itself fails to demonstrate that the proposed
3 merger will not have an adverse impact on rates,
4 terms, service, or operation of Abenaki. And
5 that further proceedings are appropriate per RSA
6 369:8, II(b), and also as supported by prior
7 Commission holdings, which have stated that "the
8 mere representations of the companies are not
9 sufficient to satisfy RSA 369:8, and that the
10 Commission must independently verify that no
11 adverse effects will occur."

12 And, as mentioned earlier, too, this is
13 a bit of a novel situation for the Commission,
14 because, at least from Staff's research, I don't
15 believe that a merger or acquisition under 369:8
16 has been conducted or asked for approval during
17 the pendency of a rate case for the underlying
18 utility. So that Staff is certainly concerned,
19 as some of the other intervenors and the OCA have
20 mentioned, it's a high-level concern for Staff at
21 this point.

22 But, despite that, we look forward to
23 discussing these matters with the intervenors and
24 the Companies at the tech session to follow, and

1 hopefully we will be able to work out a
2 preliminary procedural schedule to submit for the
3 Commission's approval, in light of the possible
4 sixty-day strict timeline.

5 Thank you.

6 HEARINGS EXAMINER WIESNER: All right.
7 Thank you, Mr. Tuomala.

8 Is there anything else we need to
9 address on the record during the prehearing
10 conference?

11 *[No verbal response.]*

12 HEARINGS EXAMINER WIESNER: If not,
13 I'll leave you to the technical session.
14 Intervenors will be treated as parties. And wish
15 you good luck in developing a procedural
16 schedule, and I'll make my recommendations as
17 Hearings Examiner.

18 Thank you.

19 ***(Whereupon the prehearing conference***
20 ***was adjourned at 3:01 p.m., and a***
21 ***technical session was held thereafter.)***