

Abenaki Water Company and Aquarion Company

DW 21-090

Aquarion Water Company's Response to Record Request

Record Request Received: June 29, 2021  
Request No. 1

Date of Response: July 1, 2021  
Witness: D. Morrissey

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REQUEST: Please describe the impact on the merger agreement and the transaction if the other states approve the transaction but New Hampshire does not.

RESPONSE: The Agreement and Plan of Merger by and among Aquarion Merger Company LLC, New England Service Company and Aquarion Company dated as of April 7, 2021 (the "Merger Agreement") sets forth the terms of the transaction by which Aquarion Company would acquire New England Service Company ("NESC") and its subsidiaries, including Abenaki Water Company ("Abenaki"). The Merger Agreement was provided in this docket on Bates pages 000019 to 000114 of Exhibit 1.

As set forth in the Merger Agreement, the transaction is subject to timely receipt of regulatory approvals in Connecticut, Massachusetts and New Hampshire. Specifically, approval of the New Hampshire Public Utilities Commission of the Abenaki acquisition is a condition to each party's obligations to consummate the transaction pursuant to the Merger Agreement. Sections 6.1(a) and 7.1(a) of the Merger Agreement (Bates pages 000068 and 000070) contain such conditions. The Merger Agreement provides that such conditions may be waived in whole or in part pursuant to Sections 6.1 and 7.1, therefore a waiver by each party would be required in order for the parties to proceed with the balance of the Merger Agreement transaction in the event the Commission did not approve the Abenaki acquisition. Alternatively, either party could terminate the Merger Agreement if a required condition is not met.

The parties are fully invested in seeing the transaction move forward in all three states in order to bring forth the customer benefits of the transaction. However, in the event Connecticut and Massachusetts were to approve the transaction and New Hampshire does not, the transaction as currently structured could not move forward unless it was restructured to spin off Abenaki. This would require the parties to reexamine key terms of the Merger Agreement.

Because the transaction is structured as a merger between NESC and a subsidiary of Aquarion, which would result in all of the outstanding shares of NESC being owned by Aquarion, a restructuring to exclude Abenaki would require NESC to transfer ownership of Abenaki to a new buyer, if one could be found, prior to the merger with Aquarion. Because Abenaki is a relatively small asset that relies in large part on shared resources within NESC's overall group of companies,

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identifying an attractive alternative buyer would prove difficult, and if any buyer were identified, that prospective owner of Abenaki would almost certainly lack the experience, familiarity, and resources of Aquarion to address the needs of the Abenaki customers. The parties are unaware of any potential buyers that would be interested in acquiring Abenaki on a standalone basis and view this scenario as unlikely.

Alternatively, NESC could look to spin off Abenaki as a separate, independent company outside of the holding company structure. However, this scenario is also problematic because the creditors of Abenaki would likely view a standalone Abenaki, outside of a holding company structure, as a serious credit risk, and this would cause Abenaki's access to needed capital to diminish if not evaporate.

Both the separate sale and spin-off scenarios would be poor results for customers and potentially very disruptive to Abenaki's continuing operations and ability to provide service to customers.

In addition to the state approvals, the parties also note that solicitation of NESC shareholder approval for the transaction is already underway. The United States Securities and Exchange Commission has declared the registration statement, with the associated proxy statement and prospectus, effective, and many shareholders have already cast their votes. A negative outcome in New Hampshire would disrupt this process.

In summary, the proposed transaction in its current form provides the best opportunity to solve the very serious challenges of Abenaki and meeting the needs of its customers on a cost-effective basis. A transfer of ownership to Aquarion will not have an adverse effect on rates, terms, service or operation of Abenaki and will provide benefits to customers as described in the evidentiary record.