

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

AQUARION WATER COMPANY OF NEW HAMPSHIRE

Petition for Franchise Expansion, Acquisition of Assets and Application of Existing Rates

Docket No. DW 21-093

INITIAL BRIEF OF AQUARION WATER COMPANY OF NEW HAMPSHIRE

Aquarion Water Company of New Hampshire (“Aquarion” or the “Company”) submits this initial brief to the New Hampshire Public Utilities Commission (the “Commission”) in support of its request to provide permanent water service to 43 customers comprising the Wiggin Way Homeowners’ Association (“Wiggin Way”), a subdivision in Stratham, New Hampshire. This brief is submitted in accordance with the Commission’s procedural order issued on November 17, 2021 (the “Order”), which noted several issues to be addressed in this proceeding, including whether “implementation of existing tariffed rates in connection with the proposed franchise expansion require detailed examination of possible rate subsidization or preference under RSA 378:10,” and that “briefing the issues would be helpful to the Commission.”¹ On December 21, 2021, the Commission modified the briefing schedule in a Procedural Order Re: Joint Motion for Reconsideration to accommodate concurrent briefing by the parties to this matter.

As demonstrated in this brief, Aquarion’s petition is just, reasonable, and meets the public good standard, and the requested franchise expansion should be approved as submitted. To effectuate permanent and individually metered service to the customers in the Wiggin Way subdivision, Aquarion seeks approval to expand its franchise into a limited area in the Town of

¹ Order at 2.

Stratham; to acquire certain existing water distribution assets that are used for providing service to these residences, with the costs of the permanent interconnection to be borne solely by the customers of Wiggin Way; and continue to apply its existing tariff rate to these customers. The Company's petition is consistent with New Hampshire law, Commission rules, and the directives contained in orders issued by the New Hampshire Department of Environmental Services ("DES") in 2017, the Commission in 2017, and the New Hampshire Water Council in 2019.² Notably, the Company's petition requests no rate changes affecting Aquarion's existing customers, requests no costs to be borne by existing customers, and proposes no customer service or operational changes that would negatively impact these customers.

I. Overview of the Company's Request

This matter has already been addressed by this Commission in Docket No. DW 16-804 *Petition for Authorization for Temporary Emergency Connection with Wiggin Farm Homeowners Association* (now closed); Docket No. 17-062, *Petition to Charge Seasonal Rates for Emergency Interconnection*; and now the instant docket. Nearly five years ago, the DES issued Order No. 17-006WD (the "DES Order") and directed Aquarion to temporarily and then permanently connect the Wiggin Way subdivision to the Aquarion water system. The DES Order was appealed by the Towns of Hampton and North Hampton to the New Hampshire Water Council. On October 25, 2019, the Water Council issued its Decision and Order in its Docket No. 17-06 WC rejecting the Towns' appeals. The rehearing period for that order expired on November 25, 2019, making the DES Order final and unappealable as of that date as no rehearing motions were filed. The DES Order found that the expansion of Aquarion's franchise

² Aquarion's petition was filed pursuant to the DES Administrative Order No. 17-006 WD dated March 29, 2017; the "Decision and Order" of the New Hampshire Water Council in its Docket No. 17-06 WC dated October 25, 2019; the Commission's Order No. 26,016 dated May 10, 2017; RSA 374:22; RSA 374:30; RSA 485:41; and Puc 202.01(a). Docket No. DW 21-093, Aquarion Petition (Nov. 20, 2020), at 1.

territory into Stratham and the transfer of assets and property rights from Wiggin Way to Aquarion is in the public good based on a determination by DES that connection to the Aquarion system is necessary as “the most feasible and cost-effective option to address the [Wiggin Way] Water System’s arsenic and low water quantity issues.” DES Order at 9. The Company has worked diligently since that time to effectuate the DES Order, implementing a temporary connection in 2017 through which it has successfully served the residents of Wiggin Way since that time. On November 11, 2020, Aquarion filed its Petition for Approval of Franchise Expansion, Acquisition of Assets, and Application of Existing Rates in this docket to complete the final step in the formal process of permanently interconnecting the customers of Wiggin Way to Aquarion’s water distribution system.

Aquarion has demonstrated that it has taken all reasonable steps and met all applicable requirements to fulfill the directives set out by DES. The Commission should grant the requested relief and end the protracted uncertainty surrounding the future of water service to Wiggin Way customers.

II. Factual Background

As a public utility, Aquarion is obligated to supply “service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.” RSA 374:1. The 43 customers of Wiggin Way had unacceptable levels of arsenic in their water as well as inadequate water capacity and operational soundness.³ Pursuant to the DES Order and Commission Order No. 26,016, Aquarion established the temporary connection of Wiggin Way to the Aquarion system in 2017. Since that time, the residents of Wiggin Way have been provided “reasonably safe and adequate” and “just and reasonable” water service as required by RSA 374:1, as have all

³ DES Order at 9.

customers in the existing Aquarion franchise; the temporary connection has served Wiggin Way without incident to any part of the Aquarion system. The DES Order also specifically directs Aquarion to make the temporary interconnection permanent subject to the Commission's approval to expand its franchise into the Wiggin Way area of Stratham;⁴ the petition in this docket was filed in response to this DES directive.

III. Aquarion Has Met the Legal Requirements for Franchise Expansion

The Commission's May 10, 2021 Order of Notice in this docket ("Order of Notice") stated that one of the issues raised by the Company's petition is whether Aquarion has met the legal requirements to be allowed to expand its franchise under RSA 374:22, I.⁵ The answer is unequivocally, yes. In fact, the Commission in Order No. 26,016 recognized the authority of DES in this situation, pursuant to RSA 485:4, I, to order the temporary connection of Wiggin Way to Aquarion's system.⁶ The same statutory provision applies to making that connection permanent, which DES has mandated in that same order. Additionally, the DES Order found that all the conditions of RSA 485:4, II had also been met. RSA 485:4, II, when satisfied, not only permits but directs DES to order the extension and connection from an area of impaired water to the existing public water supply identified by DES, *regardless of service area boundaries*. DES applied its findings under RSA 485:4, II in ordering both the temporary and permanent connections of Wiggin Way to the Aquarion system. This action was fully supported by the findings of Commission in Order 26,016. Following this Commission's logic in Order

⁴ *Id.*

⁵ "No person or business entity, including any person or business entity that qualifies as an excepted local exchange carrier, shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main, or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission." RSA 374:22(I).

⁶ Order No. 26,016, at 3.

No. 26,016 regarding DES's authority and the application of RSA 485:4, II, Aquarion is not only allowed to expand its franchise into the requested limited area of Stratham, it is required to do so.

The DES Order provides a direct response to many of the statutory provisions cited in the Order of Notice and the subsequent procedural orders issued on November 17 and December 21, 2021, and provides support for why the regulatory provisions posited by the Commission either do not apply or are already satisfied by the DES Order itself. For example, RSA 374:22, III, requiring evidence of Aquarion's suitable and adequate water supply, has been explicitly found by DES in its order.⁷ That finding was not qualified to apply to the temporary connection only, but generally to the connection of Wiggin Way to Aquarion's system, and the fact that Aquarion has been serving the Wiggin Way customers reliably since 2017 with no service issues to Wiggin Way or any customers in the existing franchise supports DES' conclusion that the supply is adequate.⁸

Similarly, the issue of whether the franchise expansion is "for the public good," as required by RSA 374:26, is also answered by the DES Order. DES issued its order pursuant to RSA 485:4, I, the purpose of which is to "insure [sic] fitness and safety and adequate protection of the public health."⁹ The purpose of RSA 485:4, I to ensure the fitness and safety and adequate protection of the public health surely satisfies the public good requirement of RSA 374:26. However, setting aside the direct statutory finding of public good, it is worth noting that in addition to Wiggin Way bearing all costs of the transaction to make the interconnection permanent, the interconnection is to remedy arsenic in drinking water and provide an adequate

⁷ DES Order at 9. Specifically, RSA 374:22, III states: "No water company shall obtain the permission or approval of the commission to operate as a public utility *without first satisfying any requirements of the department of environmental services* concerning the suitability and availability of water for the applicant's proposed water utility." (emphasis added).

⁸ DES Order at 9.

⁹ DES Order at 8.

supply of water to 43 customers.¹⁰ The public good created by the proposed franchise expansion is compelling.

IV. The Proposed Franchise Expansion Will Not Cause Undue Rate Subsidization

In its Order of Notice, the Commission directed parties to address whether the petition may cause “rate subsidization or preference under RSA 378:10.”¹¹ The Company’s petition does not request a change in rates affecting current customers, and current customers will bear no costs associated with the interconnection.¹² In their opposition to the petition, the Towns asserted without evidence that there is the potential for rate subsidization or preference, but issues related to rates are not at issue in this case. Aquarion demonstrated in its objections to the Towns’ intervention requests that issues related to rates and revenues are properly addressed in a rate case, and this is not a rate case. These concerns are unfounded and not relevant to the Commission’s consideration of the petition. Moreover, the claims have served only to create substantial delay in making permanent an interconnection that is critical to remedy a public health hazard faced by the Wiggin Way residents. But assuming for a moment that these considerations are relevant, they are also unfounded and incorrect. In discovery in this docket, responses to data requests of North Hampton demonstrate that in fact revenues generated by Wiggin Way far exceed the incremental costs to serve it.¹³

¹⁰ *Id.* at 9.

¹¹ Order at 2; *see also* Order of Notice at 2.

¹² *See* Aquarion Petition For Approval Of Franchise Expansion, Acquisition Of Assets, And Application Of Existing Rates, Attachment E, Asset Transfer Agreement.

¹³ *See* Request Nos. North Hampton 1-9 and North Hampton 1-10, provided as Attachment A.

V. The Interconnection Will Be Accomplished with No Discernable Incremental Cost to Aquarion's Operations

The Commission's Order of Notice posits whether the Commission should examine RSA 374:22 and RSA 374:26 to include consideration of any possible future rate impact from the franchise expansion upon the utility's customers. However, the transaction is structured in a manner that fully mitigates the potential for a future rate impact, which would be a factor only to the extent that such an impact existed to prevent a finding of public good created by the expansion. In fact, DES has already determined that the public good is served by the permanent interconnection of the Wiggin Way customers.¹⁴ Further, the record shows that any possible incremental costs of operating and maintaining the Wiggin Way expansion are nominal and properly accounted for, and borne solely by the Wiggin Way customers, while the revenue that will be generated by individually metering these customers once they become permanent more than compensates for any such costs.¹⁵ As Aquarion stated in its petition, supported by the attachments that include the Asset Transfer Agreement between Wiggin Way and Aquarion, all costs created by this expansion, including any resulting tax burden, will all be borne by the Wiggin Way customers.

The Wiggin Way system has been connected to Aquarion on a temporary basis for over four years, which has provided direct experience and evidence of the operating characteristics and costs of these facilities, and the potential for future O&M cost impacts. Notably and as already mentioned, the Wiggin Way facilities serve only 43 customers, which is approximately 0.45 percent of Aquarion's total 9,500 customer base. In the four years since the Wiggin Way facilities were interconnected on a temporary basis, there have been only approximately \$2,000

¹⁴ DES Order at 9.

¹⁵ See Request No. DOE 1-3, provided as Attachment B.

in incremental annual cost increases to Aquarion's operations, compared with the more than \$30,000 in associated annual revenues.¹⁶ Moreover, the permanent interconnection of the Wiggin Way customers will, all else equal, spread the cost of service across a larger customer base to the benefit of Aquarion's existing customers. Therefore, as a matter of both law and fact, the consideration of possible future rate impacts to customers does not apply to the instant case.

VI. Conclusion

Overall, the Company's petition seeks to fulfill a state agency mandate to resolve a public health hazard and should be approved as expeditiously as possible. Rates are not affected by the Commission's consideration of the Company's petition, and its approval will not limit the Commission's authority to review the Company's rates in a future rate case. The Company respectfully requests the Commission approve the franchise expansion and permanent interconnection in public interest, and find that the transaction between Aquarion and Wiggin Way is just and reasonable. Finally, the Company reiterates that it filed the petition in this matter as a final compliance item in a mandate from DES, a sister agency of the Commission. The Company has executed all requirements of the DES order in good faith and respectfully requests the Commission to allow the Company to move forward on this important project.

¹⁶ See FN 13.

Respectfully submitted,

Aquarion Water Company of New Hampshire, Inc.

Date: January 31, 2021

By:



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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

Date: January 31, 2021



Jessica A. Chiavara

ATTACHMENT A

ATTACHMENT B