

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Aquarion Water Company of New Hampshire

Docket No. DW 21-093

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

JOINT MOTION TO APPROVE PROCEDURAL SCHEDULE

Pursuant to N.H. Code Admin. Rules Puc 203.07 and the New Hampshire Public Utilities Commission (“Commission”) procedural order dated October 18, 2021, Aquarion Water Company of New Hampshire, Inc. (“Aquarion” or “the Company”), joined by the New Hampshire Department of Energy (“DOE” or “Department”) and Wiggin Way Homeowners’ Association (“Wiggin Way”) (together, the “Movants”), respectfully move that the Commission select a hearing date so that this case may be adjudicated and decided, as no further process is needed. All parties to this docket with the exception of the Towns of Hampton and North Hampton (the “Towns”) assent to and support moving directly to hearing as the process that has already taken place has been more than sufficient for the full and just examination of all relevant issues in the scope of this proceeding. Moving to hearing at this time will resolve this proceeding in an administratively efficient manner while maintaining due process for all parties, and avoids further undue delay of a long-awaited resolution of this matter.

In support of this motion, the Movants provide the following:

1. On November 20, 2020, Aquarion filed a petition to expand its franchise to include the Wiggin Way subdivision in the town of Stratham, acquire the assets of Wiggin Way, and to apply the Company’s current year-round rates to the residents of Wiggin Way – all pursuant to the mandate of the New Hampshire Department of Environmental Services’ (“DES”)

Administrative Order No. 17-006 WD dated March 29, 2017 (the “DES Order”) that explicitly directs the Company to petition the Commission “to expand the service area of Aquarion into Stratham to provide water to the residents of [Wiggin Way].” (DES Order at 9). Wiggin Way and each of the Towns each filed motions to intervene, and DOE filed an appearance on July 9, 2021. All intervention requests were ultimately granted, and the aforementioned list comprises all parties to this docket.

2. On July 28, 2021 a prehearing conference was held, and a technical session followed with all previously-named parties as participants. Once the Towns’ intervention requests were granted on September 2, 2021, the Towns served discovery on Aquarion. A second technical session was informally scheduled with the assent of all parties and held on October 28, 2021. At the conclusion of the technical session, all parties but the Towns agreed that any further process is not warranted nor appropriate for this proceeding, as all relevant factual information for all open issues in this matter have been provided at this time. This docket should accordingly move directly to hearing.

3. The matter for consideration in this docket is whether the Commission should grant Aquarion a franchise expansion into the Town of Stratham sufficient to include Wiggin Way so that the Company may fulfill the mandate of the DES Order, which has been final and unappealable for four years. All requirements of the DES Order have been met by the Company at this time except for the transfer of Wiggin Way’s assets necessary to make the interconnection permanent, and the Commission’s approval of the franchise expansion. In the Movants’ assessment, no additional process is necessary to fully adjudicate all open issues in this matter for the reasons detailed below.

4. The Asset Transfer Agreement (“ATA”) filed along with the Company’s petition provides all relevant facts relating to costs of the transaction to make Wiggin Way a permanent part of the Aquarion system – namely, that neither the Company nor any of the customers in Aquarion’s existing franchise will incur any costs. As an essential component to fulfill the requirements of the DES Order, the ATA details both the transfer of assets to Aquarion and the obligation of Wiggin Way to assume *all financial obligations* associated with the permanent connection to the Aquarion system. While the ATA does not require Commission approval, the ATA is evidence of compliance with RSA 485:4, II which provides that neither the Company nor any customers within the Company’s existing franchise incur *any* costs related to the DES Order that requires making Wiggin Way permanent Aquarion customers. Pursuant to the ATA, Wiggin Way will be responsible for any necessary new construction, Contributions In Aid of Construction (“CIAC”), and all relevant tax implications including taxes on CIAC. By its terms, the ATA ensures that there are no costs to Aquarion or Aquarion customers of the existing franchise including the Towns, consistent with the law. Therefore the matter is ripe for hearing.

5. With respect to the franchise expansion, for the Commission to find whether a franchise expansion should be granted pursuant to RSA 374:22, it needs only to find that such expansion would be for the public good as required by RSA 374:26. Here, the public good finding has already been made by DES in its final and unappealable order; the Commission and the parties need not look further for whether a public good exists. The DES Order found that the franchise expansion required to make the interconnection of Wiggin Way to Aquarion permanent “insure[s] fitness and safety and adequate protection of the public health”, as required by RSA 485:4, I. This conclusive finding means that no additional facts are needed to meet the public good threshold. Undertaking further pre-hearing process on this issue at the behest of the Towns

would only serve to impair the orderly and prompt conduct of this proceeding contrary to the requirements of RSA 541-A:32, II, under which the Towns' interventions were allowed.

6. Regarding rate issues, if the franchise expansion is approved, the only rate available to be applied is that of Aquarion's tariff for year-round customers – the Company cannot legally charge Wiggin Way customers any other rate. Any claims that potential cost shifting must be examined have already been addressed by the terms of the ATA as described above. As previously discussed, the Company and the Towns will incur no costs from either the acquisition of assets or any part of the transaction to make the Wiggin Way customers' interconnection permanent – there are no costs to be shifted, no possible subsidy exists. Thus, there are no further rate issues to examine.

7. The Movants assert that it is appropriate to schedule a final hearing on the merits to conclude this matter. The ATA and RSA 485:4, II eliminate any possibility of costs being incurred by the Company or the Towns; the DES Order provides a *per se* public good finding; and if the franchise expansion is approved, only Aquarion's existing permanent rate can be applied. The Movants agree that the Company has provided all relevant information and that this matter is ready to be heard.

8. All parties have agreed to the following possible hearing dates for the Commission's consideration: the week of February 7, or February 15, 16, or 18.

WHEREFORE, the Movants respectfully request that the Commission:

1. Approve the proposed procedural schedule by selecting one of the proposed hearing dates;
and
2. Grant such other and further relief as may be just and proper.

Dated this 29th day of October, 2021

Respectfully submitted,

AQUARION WATER COMPANY OF NEW HAMPSHIRE
By Its Attorney



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Certificate of Service

I hereby certify that on October 29, 2021, a copy of the foregoing Motion has been forwarded to the parties listed on the Commission's service list in this docket.



Jessica A. Chiavara