

**BEFORE THE NEW HAMPSHIRE
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

**MOTION FOR DEADLINE TO SUBMIT MEMORANDA
AND/OR PRE-FILED TESTIMONY**

NOW COME the Towns of Hampton (“Hampton”) and North Hampton (“North Hampton”), by and through counsel, and request that the Commission establish a deadline for submission of memoranda and pre-filed testimony, if any, as follows:

1. On October 28, 2021, the Parties participated in a technical session and discussed a procedural schedule and hearing date. The Towns understand that the Petitioner will request a hearing for the weeks of February 7 or February 14, excluding the date of February 17. The Towns do not object to a hearing on these dates.

2. During the technical session, the Towns requested that memoranda and/or testimony be submitted 30 days prior to the hearing, so as to afford each party notice and opportunity to prepare for the hearing and prepare for cross examination of any testimony that may be offered. Aquarion, the Department of Energy and Wiggin Way did not agree and indicated that they would (or could) offer testimony without pre-filed testimony, memoranda or even written recommendations prior to the hearing.

3. The Towns respectfully disagree and request that the Commission direct that any party desiring to present argument or witness testimony at the hearing do so in writing *20 days* prior to the hearing. Pre-filed testimony and/or memoranda is appropriate and necessary in this case which requires a determination that the franchise expansion is in the public good.

Significant issues remain unresolved which should be identified and described prior to the hearing on the merits.

4. The Towns note that, in its September 1, 2021 order granting intervention by the Towns, the Commission's presiding officer found that: "Specifically, the Town's participation will aid the Commission in developing a full and adequate record relating to RSA 374:26's public good requirement, as well as whether the implementation of preexisting tariffed rates in connection with the proposed franchise expansion requires a detailed examination of possible rate subsidization or preference under RSA 378:10."

5. The Commission's order recognizing the importance of possible rate subsidization or preference is consistent with law and Commission precedent. In numerous proceedings, the Commission has reviewed the sufficiency of existing rates to serve proposed customers when considering a franchise expansion. For example, in Order No. 26,301, *Hampstead Area Water Company* (October 22, 2019), the Commission considered a franchise expansion in which the utility initially provided service "on an emergency basis" and thereafter sought to expand its franchise and "charge the Company's existing consolidated rate to the proposed area". In approving the proposed expansion, the Commission found that the utility's "application of consolidated rates to Tisdale's owner is just and reasonable" (Page 6).

6. In Order No. 25,086, *Pennichuck East Utility* (March 29, 2010), the Commission found the public good test was met because the evidence showed that the proposed existing "rates will cover WVC's revenue requirement and Staff agrees." Page 5. There are numerous other examples wherein the Commission considered the sufficiency of existing rates in approving a franchise expansion. See e.g. *Order No. 24,595, Pennichuck East Utility* (March 3, 2006) (commission reviewed whether existing rates were just and reasonable for new

development in Exeter); *Order No. 24,299, Hampstead Area Water Company*, (March 26, 2004) (“This rate allows HAWC to recover the operation and maintenance expenses associated with maintaining this water system until such time as it files for a new rate.”).

7. Even if the public good standard did not include consideration of rate impacts in its scope, RSA 374:2, RSA 378:7 and RSA 378:10 require that rates be just and reasonable on an ongoing basis. In this case, the proposed franchise expansion includes a change from one rate class (seasonal rates) to another (permanent rates) which requires consideration of whether the proposed change is just and reasonable or otherwise. This does not mean that a full rate case is required: this proceeding is not a full rate case proceeding as defined by Puc 1602.02.¹ The Towns goal is for an end-result that is just and reasonable which does not require a full rate case.²

8. The Town’s concerns regarding rate subsidization and preference are significant. According to the schedules submitted in DW 20 – 184, public fire protection customers currently pay a total of \$849,320 per year in charges to maintain sufficient capacity in Aquarion’s water system for fire protection.³ Aquarion has proposed to increase public fire protection charges by some 33.3% to a total of \$1,131,877 per year.⁴ North Hampton’s fire protection charges are proposed to increase to \$340,706 per year.⁵ Aquarion’s Annual Report for the year ending December 31, 2020 shows there are 1,594 customers in North Hampton which means that the Town of North Hampton pays public fire protection charges of \$214 for each customer located in

¹ “Full rate case” means a proceeding in which a revenue requirement is established for a utility and rates set to meet that revenue requirement.

² *In re Public Serv. Co.*, 130 N.H. 265, 275 (1988) (“the constitution is only concerned with the end result of a rate order; i.e., that it be just and reasonable. Under *Hope*, the particular ratemaking methodology employed by the regulatory agency is, for the most part, constitutionally irrelevant.”).

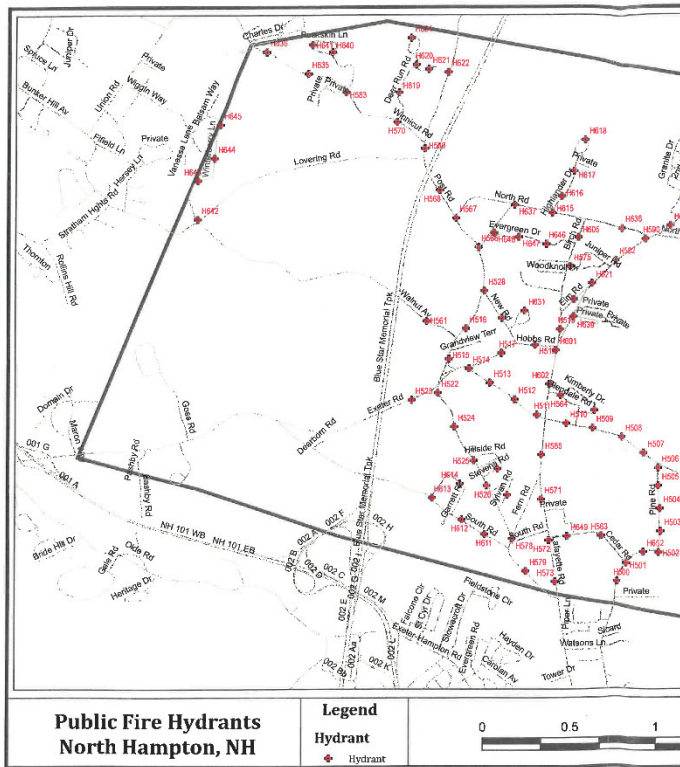
³ DW 20 – 184, Testimony of John F. Guastella, Schedule 17.

⁴ *Id.*

⁵ *Id.*

North Hampton. On a company-wide basis, Aquarion charged \$1,290,471 for public and private fire protection in 2020 which represents 17.36% of its \$7,434,530 total water revenues.⁶ In 2019, Aquarion charged \$1,314,725 for public and private fire protection service which represents 18.70% of its total water revenues of \$7,032,417.⁷

9. It is anticipated that the Department, Aquarion, or Wiggin Way may argue or allege that Wiggin Way customers do not have hydrants and therefore do not need to pay fire protection charges. However, there are multiple problems with this reasoning: First, the Wiggin



Way system has the benefit of four fire hydrants that are paid for by the Town of North Hampton. Second, fire protection charges paid by both Towns are for the surplus supply capacity to fight fires. The Wiggin Way franchise expansion reduces this surplus capacity paid for by fire protection customers. Third, North Hampton and Hampton pay for the availability of fire protection service even though many residents have

private wells with no water service or fire protection service at all.

10. How best to resolve this serious question that should be addressed in pre-filed memoranda or pre-filed testimony, not by surprise. The Towns therefore request that the

⁶ 2020 Annual Report, Form F-47.

⁷ 2019 Annual Report, Form F-47.

CERTIFICATE OF SERVICE

I certify that a complete copy of the foregoing is being sent this day to all persons on the Commission's official service list for this proceeding.

A handwritten signature in black ink, appearing to read "Justin C. Richardson". The signature is written in a cursive style with a long horizontal flourish at the end.

Justin C. Richardson, Esq.

ClerksOffice@puc.nh.gov
amanda.o.noonan@energy.nh.gov
Christopher.aslin@doj.nh.gov
christopher.r.tuomala@energy.nh.gov
cmcmorran@aquarionwater.com
dcota@aquarionwater.com
donald.kreis@oca.nh.gov
dszabo@aquarionwater.com
gmoore@devinmillimet.com
hshi@aquarionwater.com
jayson.p.laflamme@energy.nh.gov
jessica.chiavara@eversource.com
junger@aquarionwater.com
justin@nhwaterlaw.com
laughton@nhlandlaw.com
matthew.fossum@eversource.com
mgearreald@hamptonnh.gov
ocalitigation@oca.nh.gov
reimers@nhlandlaw.com
rlandman@hlinstruments.com
robyn.j.descoteau@energy.nh.gov
Suzanne.G.Amidon1@energy.nh.gov