

**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

OBJECTION TO JOINT MOTION FOR RECONSIDERATION

NOW COME the Towns of Hampton (“Hampton”) and North Hampton (“North Hampton”), by and through counsel, and object to the December 6, 2021 Joint Motion for Reconsideration as follows:

1. RSA 541:3 requires that a motion for reconsideration state “good reason” for rehearing or reconsideration. *Appeal of Gas Serv.*, 121 N.H. 797, 801 (1981). The Joint Motion fails to state “good reason” for reconsideration as the need to address rate and subsidization issues have been at the core of this proceeding since its outset. Aquarion and the moving parties ignored the Commission’s orders and failed to offer testimony as to the existence or non-existence of a rate a rate subsidization. Having ignored the issues, their Joint Motion seeks to force the Towns to quantify subsidies and rate impacts without the benefit of Aquarion’s position or access to its cost and financial data.

2. The potential for an unjust and unreasonable subsidy has been present since the outside of this proceeding. On March 1, 2021, the Town of North Hampton requested a hearing in Docket No. DW 17 – 062 to address rate and subsidization issues related to the acquisition of the Wiggin Way system. In response, on May 10, 2021, the Commission issued an *Order of Notice* commencing this proceeding. The Commission’s *Order of Notice* asked Aquarion and all other interested parties to address, *inter alia*, “whether a franchise expansion request, pursuant to

RSA 374:22 and RSA 374:26, and the 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.”¹

3. The Commission held a hearing to consider this and other issues. In its September 1, 2021 order granting intervention by the Towns, the Commission’s Chairwoman and Presiding Officer again recognized the importance of these issues, stating: “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.” As noted in the Towns’ October 29, 2021 *Motion for Deadline to Submit Testimony and/or Memoranda*, the Commission’s order recognizing the importance of possible rate subsidization and/or preference is consistent with law and Commission precedent.

4. Despite the Commission’s recognition of the issue, Aquarion has provided no testimony or other information that would quantify the presence of absence of a rate subsidy. However, the Towns have already explained the reasons to believe that an unlawful and unreasonable subsidy exists. For example, as Towns noted in their October 29, 2021 *Motion, supra*, “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.”² North Hampton has 1,594 water service customers which results in a fire protection charge to the Town of \$214 per customers that is then subsidized in the Town’s tax rate. On a company-wide basis, Aquarion charged \$1,290,471 for public and private fire protection in 2020 which represents

¹ Order of Notice, Page 2.

² DW 20 – 184, Testimony of John F. Guastella, Schedule 17.

17.36% of its \$7,434,530 total water revenues.³ In 2019, Aquarion charged \$1,314,725 for public and private fire protection service which represents 18.70% of its total water revenues of \$7,032,417.⁴ However, as proposed, Wiggin Way customers will pay no fire protection charges, despite benefitting from hydrants located immediately adjacent to the Wiggin Way system. Wiggin Way customers will also benefit from supply capacity paid for and maintained by fire protection charges paid by the Towns of Hampton and North Hampton.

5. The Commission's order directing Aquarion to address these and other issues in the first instance is well-reasoned and appropriate under the circumstances. Hampton and North Hampton have already articulated a reason to believe that an unjust and unreasonable subsidy exists. It is up to Aquarion explain its position on the record.

6. In the alternative, if the Commission grants the Joint Motion, the Towns request that the schedule be modified to allow additional time for submission of concurrent filings, e.g. initial briefs and/or testimony on January 31, 2022 with reply briefs and/or testimony on February 14, 2021. North Hampton requested that the parties assent to a schedule change for this purpose and understands that counsel for Aquarion and Wiggin Way assent to such a modification of the schedule. The Department of Energy took no position.

WHEREFORE the Towns request that the Commission deny the Joint Motion to Reconsider, or, in the alternative, modify the schedule to allow for concurrent initial filings on January 31, 2022 and concurrent replies on February 14, 2022.

³ 2020 Annual Report, Form F-47.

⁴ 2019 Annual Report, Form F-47.

Respectfully submitted,

TOWN OF NORTH HAMPTON

By its Counsel,

NH WATER LAW



Justin C. Richardson, Esq. (#12148)
586 Woodbury Avenue
Portsmouth, NH 03801
justin@nhwaterlaw.com
(603) 591 – 1241

Dated: December 13, 2021

TOWN OF HAMPTON

By its Town Attorney

_____/s/_____
Mark S. Gearreald, Esq.
NH Bar ID #913
Town of Hampton
100 Winnacunnet Road
Hampton, NH 03842
(603) 929-5816
mgearreald@hamptonnh.gov

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.



Justin C. Richardson, Esq.