

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

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

Docket No. DW 21-093

Motion for Clarification

NOW COMES the Department of Energy (Department), a party to this docket under RSA 12-P:9, and respectfully requests that the New Hampshire Public Utilities Commission (Commission) clarify its prior order in the above-referenced matter, Order No. 26,590 (March 4, 2022), pursuant to RSA 365:28, RSA 365:21, and RSA 541:3, regarding its approval of the asset transfer agreement (ATA) conveying ownership of the existing water infrastructure assets from the Wiggin Way Homeowners Association (Wiggin Way) to Aquarion Water Company of New Hampshire, Inc. (Aquarion or the Company). In support of this request, the Department states as follows:

1. On March 4, 2022, the Commission issued Order No. 26,590 (Order), granting Aquarion's petition for franchise expansion, application of existing rates, and acquisition of assets.
2. The Department is not contesting the substantive decisions that the Commission made in this Order regarding the franchise expansion, application of existing rates, or its denial to impose a surcharge upon the Wiggin Way customers, as argued by the Towns of Hampton and North Hampton.
3. The Department, however, is requesting clarification of the Commission regarding its approval of the ATA between Wiggin Way and the Company.

4. The Commission cites, in part, Aquarion’s request for approval of the ATA pursuant to RSA 374:30. Order at 6. RSA 374:30 states, however, that a “public utility” may transfer or lease its franchise, works, or system “when the [C]ommission shall find that it will be for the public good and shall make an order assenting thereto.”

5. As discussed at February 23, 2022, hearing, the Department contends that as Wiggin Way is a private water system, not a public utility, RSA 374:30 does not apply. As such, the statute cannot be the basis for approval of the ATA. Transcript of February 23, 2022 Hearing, Afternoon Session at 124-125.

6. In approving the ATA, the Commission further found that the “transfer of the subject infrastructure is just and reasonable and in the public interest” based upon Aquarion’s and Wiggin Way’s testimony, and the NH Department of Environmental Services (DES) Administrative Order No. 17-006 WD issued on March 29, 2017 (DES Order). Order at 7.

7. The Department further contends that the DES Order does not contain a provision mandating Commission approval, and in the event it did, would further argue that the DES does not have the statutory authority to direct the Commission to approve the ATA.

8. The Commission has the authority “to alter, amend, suspend, annul, set aside, or otherwise modify” its prior orders pursuant to RSA 365:28. *Northern Utilities, Inc.*, Order No. 26,510 (August 20, 2021) at 3. The authority granted under this provision is to be “liberally construed.” *Id.*, citing *Appeal of the Office of the Consumer Advocate*, 134 N.H. 651, 657 (1991); *Meserve v. State*, 119 N.H. 149, 152 (1979).

9. The Commission, furthermore, may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. *Public Service Company of New Hampshire D/B/A Eversource Energy*, Order No. 26, 528 (September 27, 2021) at 3 (citing

RSA 541:3; RSA 541:4; and *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011). “A successful motion must establish ‘good reason’ by showing that there are matters that the Commission ‘overlooked or mistakenly conceived in the original decision.’” *Id.* (citing *Dumais v. State*, 118 N.H. 309, 311 (1978)).

10. The Department reiterates its position from the February 23, 2022, hearing, that the ATA is certainly evidence to be considered by the Commission regarding the public interest standard of a franchise expansion under RSA 374:26, and compliance with RSA 485:4, II (prohibiting the DES Order from delegating any costs associated with a connection to Aquarion or its current customers). The Department respectfully argues, however, that as Wiggin Way is a private water system, the Commission does not have the authority to approve the ATA per RSA 374:30.

11. As such, the Department disagrees with the Commission’s approval of the ATA and requests the Commission to clarify its approval of the ATA pursuant to RSA 363:28, RSA 363:21, and RSA 541:3.

WHEREFORE, the Department respectfully requests that this honorable Commission:

- A. Clarify its approval of the asset transfer agreement; and
- B. Grant such other and further relief as may be appropriate under the circumstances.

April 1, 2022

N.H. DEPARTMENT OF ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.

/s/ Christopher R. Tuomala

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