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APPEARANCES: *(C o n t i n u e d)*

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Christopher R. Tuomala, Esq.
(Regulatory Support Division)

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P R O C E E D I N G

1
2 CHAIRWOMAN MARTIN: We're here this
3 morning in Docket DW 21-093 for a prehearing
4 conference regarding the Aquarion Water Company
5 of New Hampshire Petition for Approval of
6 Franchise Expansion, Acquisition of Assets, and
7 Application of Existing Rates.

8 My name is Dianne Martin. I am the
9 Chairwoman of the Public Utilities Commission.

10 Commissioner Goldner, would you
11 introduce yourself please.

12 COMMISSIONER GOLDNER: Good morning.
13 This is Dan Goldner.

14 CHAIRWOMAN MARTIN: And let's take
15 appearances, starting with Aquarion. I see Mr.
16 Fossum.

17 MR. FOSSUM: Good morning. Matthew
18 Fossum, here for Aquarion Water Company of New
19 Hampshire. And with me as co-counsel this
20 morning is Jessica Chiavara.

21 CHAIRWOMAN MARTIN: Okay. Thank you,
22 Mr. Fossum.

23 And, in the hearing room, we have Mr.
24 Richardson.

1 MR. RICHARDSON: Good morning, Madam
2 Chair and Commissioner. I'm Justin Richardson,
3 with NH Water Law, here on behalf of the Town of
4 North Hampton.

5 CHAIRWOMAN MARTIN: Thank you. And we
6 also have Senior Assistant Attorney General
7 Aslin. If you could introduce yourself?

8 MR. ASLIN: Good morning, Chairwoman.
9 Chris Aslin, from the Department of Justice. I
10 am here representing the New Hampshire Department
11 of Environmental Services.

12 CHAIRWOMAN MARTIN: Okay. Thank you.
13 And I believe online we have Mr. Reimers, if I'm
14 saying that right?

15 MR. REIMERS: No. Jason Reimers.
16 Thank you, Madam Chair. Jason Reimers, with BCM
17 Environmental & Land Law. And I represent
18 intervenor Wiggin Way/Winterberry Homeowners'
19 Association.

20 Thank you.

21 CHAIRWOMAN MARTIN: Thank you. And Mr.
22 Gearreald.

23 MR. PATNAUDE: You're on mute.

24 CHAIRWOMAN MARTIN: We cannot hear you,

1 Mr. Gearreald.

2 MR. GEARREALD: Let's try that.

3 CHAIRWOMAN MARTIN: That's better.

4 MR. GEARREALD: Thank you. Yes. Mark
5 Gearreald, I'm the Town Attorney in-house for the
6 Town of Hampton.

7 CHAIRWOMAN MARTIN: Okay. Thank you.
8 And Mr. Tuomala.

9 MR. TUOMALA: Good morning, Madam
10 Chairwoman, Commissioner Goldner. My name is
11 Christopher Tuomala. I'm the attorney
12 representing the Department of Energy, Division
13 of Regulatory Support.

14 CHAIRWOMAN MARTIN: Okay. Thank you.
15 Is there anyone I have not recognized who needs
16 to put in an appearance?

17 *[No indication given.]*

18 CHAIRWOMAN MARTIN: All right. Seeing
19 none.

20 Let's take preliminary matters,
21 starting with pending Motions to Intervene.

22 I have an intervention from the -- a
23 renewed intervention request from the Town of
24 Hampton. No written objections have been

1 received to that in this docket. And I was
2 wanting to hear any argument necessarily related
3 to that Motion for Intervention?

4 MR. GEARREALD: Yes. Madam Chair,
5 thank you. This is Mark Gearreald. I am here
6 for the Town of Hampton.

7 The Town of Hampton has approximately
8 75 percent of the customers of Aquarion Water
9 Company. We also have -- we are a customer as
10 well. The Town has spent, in 2018, approximately
11 \$53,000 in water bills; in 2019, \$45,000 worth of
12 water bills; and, in 2020, \$30,000 worth of water
13 bills. We also have half -- approximately half
14 of Aquarion's privately owned hydrants serving
15 the Town. And we pay for that privilege about
16 \$500,000 a year, and, in the general rate case,
17 that's proposed to increase \$650,000.

18 We have appeared in every proceeding
19 that Aquarion has had before the Commission,
20 without objection, until now, since approximately
21 2005.

22 The Commission has asked various
23 questions regarding standing in the Order of
24 Notice of May 10th. And I would like to defer to

1 Attorney Richardson, who's there live, to address
2 those particular questions. He, too, represents
3 a proposed intervenor, the Town of North Hampton.

4 Thank you.

5 CHAIRWOMAN MARTIN: All right. Thank
6 you.

7 I think I'd like to hear then from the
8 other parties first on the renewed intervention
9 request for the Town of Hampton. Mr. Fossum,
10 would you like to start?

11 MR. FOSSUM: I would. And I suppose I
12 would offer this first. I believe I heard the
13 Chair say that there was no written objection to
14 the renewed intervention request of the Town of
15 Hampton. But that is -- I don't believe that's
16 accurate. Back on December 18th, 2020, Aquarion
17 did file a written objection. It's in the
18 Commission's docketbook on its website as Entry
19 Number 6. So that there was a written objection
20 submitted.

21 CHAIRWOMAN MARTIN: Okay. I apologize
22 if I missed that one. I was going through the
23 docketbook.

24 MR. FOSSUM: Oh, no problem. But, you

1 know, I guess, just to, essentially, without
2 restating what's there, it's in writing and can
3 be read. But the basic premise of the objection
4 is that Hampton does not have any rights, duties,
5 or privileges that are at stake in this
6 proceeding. This is a proceeding to expand the
7 franchise, as has been ordered by the New
8 Hampshire Department of Environmental Services.
9 So, we are fulfilling a mandate of the state
10 agency.

11 In doing so, the agreement for the
12 assets that are in place there assures that the
13 costs of expanding that franchise and adding
14 those customers are borne by those customers
15 alone, and are not transferred to any other
16 customers, including Hampton or, for that matter,
17 North Hampton. Since there is no rate impact to
18 either of those parties, they really have no
19 interest here.

20 And, beyond that, I know in some of the
21 written pleadings there have been questions about
22 the supply and the impact of supply from
23 completing this expansion. These customers in
24 this subdivision have been served by Aquarion

1 since 2017. So, there is no impact on supply.
2 What is proposed here is to make permanent
3 something that has been done on a temporary
4 basis. We're not expanding customers. We're not
5 adding beyond. We're simply changing the manner
6 of interconnecting customers that we supply
7 today.

8 So, there's no impact on rates for
9 Hampton or North Hampton. There's no impact on
10 supply for Hampton or North Hampton. And, so, we
11 simply don't see them as having any interest at
12 stake in this proceeding.

13 And, beyond that, as has been in of the
14 written materials that we have submitted, we have
15 some concerns about delays to the process. In
16 the standards for intervention, it requires that
17 intervenors not disrupt the orderly conduct of
18 the proceeding. And we have some serious
19 concerns about intervention delaying this
20 process. This has been a very long, delayed
21 process, both at Environmental Services and
22 potentially now here, and we would like to avoid
23 further delay in the process by intervenors who
24 simply don't have a recognizable interest at

1 stake.

2 CHAIRWOMAN MARTIN: Okay. Thank you,
3 Mr. Fossum.

4 Anyone else like to be heard on that,
5 other than Mr. Reimers?

6 MR. REIMERS: Yes. Thank you.

7 We, Wiggin Way, joined in Aquarion's
8 written objection to the Town of Hampton's Motion
9 to Intervene. And we agree with everything that
10 Attorney Fossum just said.

11 We're here to expand the franchise to
12 43 homes in Stratham, as ordered by DES, and as
13 upheld by the New Hampshire Water Council. The
14 Town of Hampton has no standing here. All of
15 their concerns that they raise are either
16 irrelevant, they have been addressed by DES, and
17 the Water Council appeal of DES's order, or they
18 would be appropriately raised -- they're
19 rate-related, and would be appropriately raised
20 in the rate docket, which is DW 20-184.

21 So, for all the reasons in Aquarion's
22 objection, and stated today, and what we will
23 present in our statement shortly, please deny
24 Hampton's Motion to Intervene.

1 Thank you.

2 CHAIRWOMAN MARTIN: Thank you.

3 Mr. Tuomala, I saw your hand. Go ahead.

4 MR. TUOMALA: Thank you, Madam
5 Chairwoman.

6 The Department of Energy shares some of
7 the similar concerns brought up by potential
8 intervenor Wiggin Way and Mr. Fossum. Pursuant
9 to 541-A:32, as the Commission is well-versed
10 with, there are two standards, mandatory and
11 permissive. The Department is not convinced that
12 the Town of Hampton meets the mandatory standard
13 of 541-A:32, I. We believe that the concerns
14 elicited by Hampton are too remote in this
15 proceeding.

16 The subject matter of possible rate
17 impact, as spoken to by Mr. Reimers, would
18 probably be better addressed in a rate
19 proceeding, which is occurring right now in DW
20 20-184, which the Town of Hampton is a recognized
21 intervenor.

22 And moving to the permissive standard
23 of 541-A:32, II, we are not as firmly committed
24 to denying them intervention based on permissive.

1 However, we do share some of the same concerns of
2 their possible action in this docket, which may
3 cause further delay. We recognize that this has
4 been going on for three, four plus years now.
5 This was an extension of a '17 docket. And, so,
6 the Department is mindful, and would like to see
7 a resolution to this docket sometime in the near
8 future.

9 So, we would like to bring to your
10 attention Part III of the statute 541-A:32. And,
11 if the Commission does decide to grant
12 intervention, the Department would request that
13 the scope of their participation be possibly
14 limited. And also, under Part (c) of Section
15 III, to join their efforts with the Town of North
16 Hampton, if it so decides to grant North Hampton
17 intervention as well.

18 Thank you.

19 CHAIRWOMAN MARTIN: Mr. Tuomala, you
20 suggested the potential of "limiting the scope of
21 intervention". Do you have thoughts along those
22 lines? Or is that just a general recommendation?

23 MR. TUOMALA: For right this moment, I
24 believe it would be a general recommendation. I

1 would like to see if we flesh out some of the
2 concerns brought up in the Order of Notice that
3 was issued on May 10th, to describe some of the
4 possible questions the Commission elicited with
5 rate impact.

6 So, I do not have a specific suggestion
7 at this point. But, if I could reserve for now,
8 until the end of the prehearing conference, I'd
9 appreciate that.

10 CHAIRWOMAN MARTIN: Okay. Thank you.
11 Anyone else on the Town of Hampton?

12 MR. GEARREALD: May I respond,
13 Commissioner?

14 CHAIRWOMAN MARTIN: You may.

15 MR. GEARREALD: Yes. What we have here
16 is a proceeding, which is subsequent to what the
17 DES ordered. The DES order is attached to the
18 Petition brought by Aquarion. What the DES order
19 requires is an interconnection permanent to
20 supply water. What it does not require is that
21 Aquarion acquire a now 22 year-old system that
22 serves the distribution for Wiggin Way. It does
23 not require that Aquarion take over maintenance
24 of that system. It does not require that

1 customers be individually metered for that
2 system.

3 We do not have experience of what may
4 happen when that system is energized by --
5 pressurized by Aquarion Water. The Town of
6 Hampton, like all Aquarion customers, pays for
7 upgrades to mains through WICA, the WICA
8 proceeding so far, the WICA Program. We do not
9 want to pay for upgrading the 22 year-old system
10 when that comes along.

11 During the course of the proceedings at
12 DES, it was found that Aquarion had filed with
13 this Commission in 2017 a annual report which
14 indicated the cost for this particular project,
15 additional cost would be \$700,000. Later,
16 Aquarion testified that that was the value of the
17 system. Now, it's been stated in the Petition
18 that the value of the system is approximately
19 \$307,000.

20 The Town of Hampton should not be
21 required in any way, shape, or form to pay for
22 the cost of having to replace that distribution
23 system that's 22 years old. It was not installed
24 by Aquarion. There were questions about its

1 quality. It certainly doesn't meet the current
2 standards for construction that Aquarion would
3 require. And, so, we do not want to have that be
4 a liability for existing customers.

5 And, again, I would defer to Attorney
6 Richardson, who's there, for the standing of
7 existing customers to complain.

8 CHAIRWOMAN MARTIN: Okay. Thank you,
9 Mr. Gearreald.

10 MR. RICHARDSON: Madam Chair?

11 CHAIRWOMAN MARTIN: Yes.

12 MR. RICHARDSON: Many of the issues
13 that North Hampton has raised in its Motion would
14 overlap with those in Hampton's. Might I suggest
15 that I be provided the opportunity to speak to
16 address some of the issues, because they're
17 really the same on North Hampton's Petition and
18 Hampton's? And I don't want my silence to, you
19 know, be construed as having nothing to say. I
20 think it would be appropriate for me, at this
21 time, or some other time, to weigh in on the
22 issues that we're discussing now.

23 CHAIRWOMAN MARTIN: I'm going to give
24 you an opportunity. And I'm going to let the

1 parties know that I'm not going to rule on these
2 two Motions to Intervene at this hearing today.
3 I'm going to take it under advisement.

4 So, I think it's fine for you to
5 incorporate your responses into your own
6 presentation, rather than to the Town of North
7 Hampton's Motion to Intervene.

8 MR. RICHARDSON: Thank you.

9 CHAIRWOMAN MARTIN: Okay. Anything
10 else on Hampton? Mr. Fossum.

11 MR. FOSSUM: Thank you. Just one final
12 point I wish to make, in response to what Mr.
13 Gearreald had just said, regarding the concerns
14 of the Town of Hampton about bearing costs of the
15 system.

16 Our petition here makes very clear what
17 is in the Asset Transfer Agreement that's
18 attached to the Petition, which is that the
19 Wiggin Way will pay the costs of the system
20 investments that are necessary to complete this
21 individual interconnection. We have been overt
22 about that since the first day.

23 So, there are no costs to be
24 transferred to Hampton or anyone else. And that

1 is -- that's evident in our Petition and the
2 attached materials.

3 CHAIRWOMAN MARTIN: Thank you, Mr.
4 Fossum.

5 All right. With that, we will move on
6 to Mr. Richardson on the Town of North Hampton's
7 Motion.

8 MR. RICHARDSON: Okay. Thank you,
9 Madam Chair. We appreciate the opportunity to be
10 here today.

11 One thing that I'd like to address at
12 the outset, before going into the legal issues,
13 is that both in the Joint Statement of
14 Petition [Positions?] that was filed last week,
15 and in North Hampton's present Petition to
16 Intervene, which was filed on Monday, I hope it
17 was clear that the system's connected now, and
18 our concern is not to oppose the connection.
19 That's been ordered by DES. That issue has been
20 resolved.

21 The concern that is stated in the Joint
22 Statement of Petitions -- or, Positions that was
23 filed on Friday, looking at Paragraph 2, and it
24 says "Hampton and North Hampton do not object to

1 water service being provided to residents of
2 Wiggin Way provided that supply is adequate and
3 rates are sufficient to cover the costs to serve
4 these customers and do not result in an unlawful
5 subsidy under RSA 378:10." And that's -- it's
6 important to keep that in perspective.

7 Aquarion's existing rate structure
8 really has two categories of rates. There are
9 rates for water service, whether that's
10 residential, commercial, industrial, and then
11 there are fire protection rates. And the fire
12 protection rates -- the public fire protection
13 rates are significant. The figure that is
14 referred to is exactly \$849,000 under current
15 rates. In the pending rate case, that is
16 proposed to increase to 1.13 million. And I do
17 apologies. In the petition that was filed on
18 Monday, at one point I said "1.3", I meant to say
19 "1.13". So, there is a typo in that document,
20 but the first time it's listed it's correct.

21 That's a significant amount of money.
22 And what that fire protection rate reflects is
23 not consumption, because the fee is paid for
24 hydrants whether there's a fire or not. Hampton

1 and North Hampton are paying for the
2 availability. So, in other words, the tanks are
3 larger, the pipes are larger, to create
4 additional supply above and beyond what occurs
5 during a peak demand, typically, in August, when
6 you've got people watering their lawns, using up
7 a lot of water, you have to also be able to fight
8 fires.

9 What this proceeding represents is an
10 expansion of use and consumption over those 43
11 customers. But it does not include any
12 recognition or adjustment of the loss of
13 availability of water for which Hampton will
14 still -- excuse me, North Hampton will be paying,
15 under the proposed rate, \$340,000 per year. And
16 that is a significant amount of money.

17 And, when we look at the statute, RSA
18 541-A:32, it allows for the mandatory
19 intervention, which I would submit applies here.
20 Whenever the petition to intervene "states facts
21 demonstrating that the petitioner's rights,
22 duties, privileges, immunities and other
23 substantial interests may", and I emphasize that
24 word, "may be affected".

1 Our concern is that, when we add
2 additional demands on the system, without an
3 availability charge or recognition that this
4 system is taking away for availability that has
5 been paid by the towns, that \$340,000 may not be
6 enough. It may go up. Essentially, we may be
7 robbing Peter to pay Paul, in some sense. We're
8 taking away from the supply that North Hampton
9 and Hampton have paid for.

10 And in the -- in this proceeding, and
11 in other proceedings, under the "public good"
12 standard, we cited -- or, I cited, in North
13 Hampton's Petition to Intervene, that, when we
14 review a franchise expansion under the "public
15 good" standard, one of the things the Commission
16 looks at is whether the existing rates are
17 sufficient to cover the cost to serve these
18 customers. And we're only -- the problem is
19 we're only looking at the cost of water service.
20 We're not looking at the cost of what is the
21 availability that's being taken away.

22 The other thing that has been alluded
23 to is that this is an old system. It was
24 implemented just at the very beginning, I

1 believe, of what were called the "Capacity
2 Assurance Programs". Aquarion's standards
3 currently are to install 8-inch mains. This
4 system has 3- and 4-inch PVC mains, which do not
5 have the physical capability and life cycle that
6 a typical 8-inch main that would required today.

7 And, when projects go before the
8 planning boards of Hampton and North Hampton for
9 expansions for subdivisions, one of the things
10 that the Towns require is that the systems be
11 upgraded. They have to meet Aquarion's
12 standards. And, if we were to do that in this
13 case, we would get a letter saying "Oh, gosh.
14 This isn't what we would allow today."

15 When you look at Aquarion's tariff, it
16 refers to the requirement being to install 8-inch
17 mains. It also refers to the requirement to
18 anticipate and provide for in like a development
19 agreement, I'm referring to Paragraph 40 of the
20 tariff, and specifically Paragraph 40(g) as well.
21 It talks about having to cover the other costs
22 that would be imposed upon the system. And one
23 of those costs is, obviously, future upgrades,
24 the other is availability.

1 Now, how much revenue then will this
2 system generate? When we look at the PUC's
3 factsheet on what water rates are, which was done
4 in 2019, which includes adjustments for WICA, we
5 see that Aquarion's rates are approximately \$571
6 per customer, residential customer. We're adding
7 43 customers. That results in less than \$25,000
8 per year, for a system which has several miles of
9 mains that may or may not be deficient, there may
10 or may not be leaks. We don't know how much
11 supply we're losing. But that's an important
12 issue to examine. And we would like to examine
13 that, and make sure that, at the end of the day,
14 this acquisition, which is important, proceeds in
15 a manner that's fair to customers in Wiggin Way,
16 and that's fair to customers in Hampton and North
17 Hampton, and every other community that is served
18 by the system.

19 We have also submitted and argued, and
20 I think it's correct, based on the cases that
21 we've cited and the statutes, that what is
22 happening here is that service was originally
23 connected based on a seasonal rate. We're now
24 changing to a metered rate -- excuse me, we're

1 now changing to the permanent rate. And that's
2 something that should go through the rate review
3 process.

4 We cited to the Hampstead --

5 CHAIRWOMAN MARTIN: Mr. Richardson, I
6 apologize for interrupting. That's a separate
7 motion. Does this go to your intervention as
8 well?

9 MR. RICHARDSON: I apologize. You have
10 correctly recognized that I was making my
11 argument on the merits in the Statement of
12 Positions.

13 So, I will wrap up at this point on
14 intervention. I think we've met the minimum
15 standard. We don't have to prove in advance that
16 we will be impacted or quantify what those are.
17 The statute says intervention is allowed if this
18 "may impact" our substantial interests. And,
19 certainly, paying \$340,000 per year, as Aquarion
20 has proposed, is a pretty substantial amount of
21 money, that we want to be make sure is fairly
22 addressed in this proceeding.

23 Thank you.

24 CHAIRWOMAN MARTIN: Okay. Thank you.

1 Mr. Fossum, you did address some of the
2 Town of North Hampton in your original argument.
3 But do you have additional response?

4 MR. FOSSUM: I do. Thank you. And
5 also, consistent with the Commission's May 10th
6 Order of Notice, Aquarion has filed an objection
7 to the North Hampton Petition, the one that came
8 in on Monday. So, I just filed that about an
9 hour ago. So, that is there. And again, I won't
10 belabor the points, they're in writing and part
11 of the Commission's record now. But I will
12 address a couple of items.

13 First, I'm not certain what facts Mr.
14 Richardson is pointing to to indicate that there
15 is some expansion of consumption that is
16 happening here. There are 43 customers in Wiggin
17 Way now who receive water from Aquarion;
18 following of the permanent interconnection, there
19 will be 43 customers in Wiggin Way who receive
20 water from Aquarion.

21 The only thing that will change is the
22 manner in which they are interconnected to the
23 Aquarion system. There is no uprate to their
24 demand. We're not aware of construction in the

1 subdivision that would increase demand. And, as
2 pointed out earlier, in response to Hampton's
3 argument, the costs of any upgrade required to
4 facilitate the interconnection in the Wiggin Way
5 division is borne by the Wiggin Way customers.

6 So, there's no increase in usage by
7 those customers. There's no costs being
8 transferred from those customers to anyone else.
9 And, so, we simply don't see where the interest
10 of North Hampton comes in here.

11 I don't dispute that North Hampton pays
12 fire protection charges to Aquarion. And, to the
13 extent that North Hampton or Hampton have
14 questions about those fire protection rates,
15 there is, as has been discussed this morning, an
16 open rate proceeding in Docket 20-184 for raising
17 and addressing those issues.

18 There's simply nothing here that
19 demonstrates that North Hampton will be impacted
20 by this interconnection. And, so, we simply
21 don't see any justification for their
22 participation.

23 And, similarly, I'd like to reiterate
24 our concerns about further delay in looking at

1 issues that don't really matter for completing
2 the process before the Commission. We'd like to
3 have this move as efficiently as possible from
4 here forward.

5 And, so, I will -- at this point, I'll
6 just -- I'll defer to what we have put in writing
7 in our other objections to the intervention
8 requests.

9 CHAIRWOMAN MARTIN: Okay. Thank you,
10 Mr. Fossum.

11 Does anyone else want to be heard on
12 this Motion to Intervene? Mr. Tuomala.

13 MR. TUOMALA: Thank you, Madam
14 Chairwoman.

15 For the record, we renew the same
16 arguments that we had with Hampton. That the
17 Department is not convinced that they meet the
18 mandatory standard.

19 North Hampton spoke about fire
20 protection, public fire protection rates. Again,
21 there's a rate case open that would deal with
22 fire protection rates. At the end of a franchise
23 expansion, rates aren't set, in particular, to
24 public fire protection. So, I would be unclear

1 as to what relief could be sought for North
2 Hampton if they participated in this proceeding.

3 And, again, the same line of reasoning
4 with the permissive standard of intervention, the
5 Commission -- the Department, excuse me, is not
6 as fully convinced that they don't meet that
7 standard. But, however, if they do -- if the
8 Commission does decide to grant intervention, we
9 would request, again, under Section III, either
10 their participation be limited, under Subsection
11 (a), and also that their efforts be combined with
12 Hampton, if the Commission does grant their
13 intervention, under Subsection (c).

14 Thank you.

15 CHAIRWOMAN MARTIN: All right. Thank
16 you, Mr. Tuomala.

17 Mr. Reimers.

18 MR. REIMERS: Yes. Wiggin Way agrees
19 with everything that Attorney Fossum said and
20 Mr. Tuomala.

21 The quality of the system was addressed
22 in the DES and Water Council proceedings. The
23 capacity to serve all the existing customers was
24 addressed in those proceedings. And everything

1 else I heard Attorney Richardson talk about had
2 to do with rates that would be more appropriately
3 addressed in the rate case.

4 Thank you.

5 CHAIRWOMAN MARTIN: All right. Thank
6 you. Anyone else on that Motion to Intervene?

7 MR. RICHARDSON: If I may, Madam Chair?
8 On the --

9 CHAIRWOMAN MARTIN: Go ahead.

10 MR. RICHARDSON: First of all, on the
11 rate issue in the rate case, as the Commission is
12 aware, rates are set and limited by the Order of
13 Notice that is issued by the Commission based on
14 what the utility applies for.

15 Our concern is that coming out of this
16 proceeding, we would like to have discovery to
17 identify what the cost impacts are. And then,
18 come out of this proceeding, once those costs are
19 identified and determined, we'd like to see an
20 order of notice, perhaps a supplemental order of
21 notice. Because, if we do not have an order of
22 notice, you can't increase customer rates. The
23 only legal option would be to set these rates at
24 either maintaining them at the existing seasonal

1 rate or to put them at the General Metered
2 customer rate.

3 So, our concern is, in this proceeding,
4 is to figure out what the costs to run the system
5 are. They're going to be higher than \$25,000 per
6 year. I just don't see how you could run a
7 system of this size for so little money.

8 It may be that rates have to be
9 increased by 5 percent, 10 percent, some other
10 number. We don't know. But we want to find out
11 what that is, and we want to find out what the
12 impact is on the availability charges that C(H-v)
13 we are paying, so that this Commission can then
14 issue an appropriate notice so that rates can be
15 adjusted so that everyone pays for the
16 appropriate charges.

17 Right now, in the rate case, there's no
18 mechanism to recognize that issue. The rate case
19 is based on solely General Metered customers and
20 public fire protection customers. Doesn't take
21 into account anything different for a system in a
22 different town that doesn't pay availability
23 charges the way Hampton and North Hampton do.

24 CHAIRWOMAN MARTIN: So, am I

1 understanding you to say, with an additional
2 order of notice, raising that issue and putting
3 notice out there on it, that it could be
4 addressed in the rate case?

5 MR. RICHARDSON: Absolutely. It could
6 even be appropriate to consolidate the two, given
7 that North Hampton's concerns at this point are
8 primarily financial ones. Let's set a rate that
9 works. We're not here to oppose connection of a
10 system where there are arsenic and inadequate
11 supply issues. Those issues are addressed by the
12 DES order. They're not pending before this
13 Commission or any other place.

14 What is pending, and what I think does
15 need to be addressed, both under the "public
16 good" and under the rate standards, is "what is
17 the cost to serve these customers and how should
18 rates be set?"

19 CHAIRWOMAN MARTIN: Thank you.

20 Mr. Fossum, I'd like to hear from you
21 on that, and Mr. Tuomala, given that you have
22 suggested that the rate case is the appropriate
23 place to deal with any rate impact. Can you
24 respond to the assertions by Mr. Richardson

1 please?

2 MR. FOSSUM: Certainly. And I'll start
3 by noting that Aquarion would object to combining
4 this docket with the rate case docket. In some
5 of the materials that we have filed, it seems
6 fairly evident the most efficient way to deal
7 with issues is to resolve this docket quickly, so
8 that we can account for all customers as part of
9 the rate case subsequently. To combine them puts
10 this case on essentially the same track as the
11 rate case, and we don't see that as being an
12 efficient or effective way to resolve the issues
13 here.

14 I guess, with that said, I'm not fully
15 understanding quite what it is that Mr.
16 Richardson is asking for. If it's simply that
17 the Commission needs to modify the Order of
18 Notice in the rate case somehow, to account for
19 potential rate impacts for 43 residential
20 customers, I suppose I don't have an issue with
21 that. And, in fact, I think that would be in
22 line with what we have suggested. I simply don't
23 see that as being an issue in this case.

24 We have proposed in this case to move

1 the customers from a seasonal rate to the regular
2 residential rate that applies, because, once this
3 interconnection is complete, they will be no
4 different than regular residential customers
5 anywhere else on the system.

6 So, you know, Mr. Richardson's concerns
7 about some math that he has done to figure out
8 what he believes the cost of service in this
9 section is, you know, that might be interesting,
10 I have no idea if it's accurate. But I simply
11 just -- I don't see it as being an issue here.
12 And, if there is a desire to talk about it in the
13 rate case, I wouldn't have an issue doing that.

14 Which I think I have answered your
15 question, but maybe I wandered a bit away from
16 it.

17 CHAIRWOMAN MARTIN: Nope. You answered
18 it perfectly. Thank you.

19 Mr. Tuomala.

20 MR. TUOMALA: Thank you, Madam
21 Chairwoman.

22 The way I understand it, there's two
23 questions to be answered. One was the offer to
24 consolidate. I share the same concerns as

1 Attorney Fossum. I looked at the Order of
2 Notice, and suspension of the schedules goes to
3 July 29th of next year. So, it's possible that
4 this rate case, DW 20-184, won't be resolved
5 until calendar year plus a day from right now.
6 And I think that tying the two together to
7 resolve a franchise expansion, while not always
8 the quickest docket to resolve, would certainly
9 and hopefully be achieved before the end of an
10 entire calendar -- excuse me, an entire year.

11 So, the Department's standpoint was, it
12 would not be recommended to consolidate the two
13 dockets.

14 And, in terms of notice in the rate
15 case docket, I'm not sure that additional notice
16 is required. I would need additional time to
17 look at the Order of Notice. But I assume, and
18 I'll defer to Attorney Fossum, but I assume
19 Wiggin Way, as seasonal customers, under the
20 Commission order, that they received notice of
21 the rate case. The rate case notice pointed that
22 they wanted an 18 percent rate increase. And I'm
23 not sure that, with the addition of these
24 customers, and a permanent rate structure, would

1 move the needle at all that would require an
2 additional notice.

3 So, if the original Order of Notice in
4 DW 20-184 would cover that change from seasonal
5 to permanent rate in their rate increase, I don't
6 think one is necessary.

7 But, again, I would defer, I guess,
8 back to Attorney Fossum. I'm not sure about the
9 calculation of the rate increase, and if it had
10 included the 43 customers. But, again, this is a
11 system of 9,500 customers at this point, and
12 we're talking about 43 residential customers.
13 It's not the addition of doubling their customer
14 base or some commercial customers that are going
15 to increase volumetric use exponentially.

16 But, if that is the resolution, I would
17 support a reissuance of notice in the rate case.
18 But definitely not a consolidation of this case
19 with the rate case.

20 MR. RICHARDSON: If I may, Madam Chair?

21 CHAIRWOMAN MARTIN: Well, I want to
22 hear from Mr. Reimers first, and then I'll come
23 to you.

24 Mr. Reimers.

1 MR. REIMERS: Thank you.

2 Wiggin Way strongly objects or opposes
3 the consolidation of this docket with the rate
4 case docket, for reasons that I'll talk about in
5 my position statement. Wiggin Way strongly
6 desires that this matter, not the rate case, but
7 this matter be resolved as soon as possible.

8 Thank you.

9 CHAIRWOMAN MARTIN: Thank you,
10 Mr. Reimers. Mr. Richardson.

11 MR. RICHARDSON: I think the parties
12 misunderstand a little bit what I was alluding to
13 when I talked about an order of notice. It's not
14 that the Wiggin Way system will result in a
15 dramatic change of the overall companywide rates.
16 Our concern is that we're adding a system that
17 doesn't fully cover the cost to provide service
18 to it.

19 So, my suggestion was that an order of
20 notice might be issued in this proceeding, if the
21 evidence were to lead to the fact that, for
22 example, these customers do not pay availability
23 charges, and there's a financial impact on North
24 Hampton and Hampton that do pay that. So, what

1 is the appropriate rate? And, right now,
2 legally, the only rate change is that submitted
3 in the rate case that has been noticed. There's
4 not a potential rate change for this system to
5 account for its impact on availability charges.

6 And that is not something that has to
7 happen in a rate case. There are sometimes
8 smaller rate cases. Sometimes, when a company
9 has multiple rate schedules, they can do an order
10 of notice for just that, and that could be a
11 potential outcome out of this system. It may be
12 that it's something that falls within the
13 existing Order of Notice that has been issued.
14 We just don't know. And that's the reason for
15 asking to intervene, is to find out what those
16 costs are, and how they will be addressed or not
17 addressed.

18 CHAIRWOMAN MARTIN: Okay. So, your --
19 excuse me, your reference to "order of notice"
20 was actually in this proceeding, not in the
21 current rate case?

22 MR. RICHARDSON: There has been no
23 order of notice addressing what the rate should
24 be for these customers, in any proceeding that

1 I'm aware of, other than the rate case.

2 CHAIRWOMAN MARTIN: If there were -- if
3 you didn't have any dispute related to order of
4 notice in the rate case itself, is there any
5 reason that that couldn't be addressed there?

6 MR. RICHARDSON: The only reason is is
7 that a rate -- a different rate for the Wiggin
8 Way system, if the evidence again shows that the
9 costs are higher than just the General Metered
10 rate to serve these customers. There's no legal
11 mechanism or framework for it.

12 So, what we would suggest was, in this
13 proceeding, we'll go through the discovery
14 process, try to find out what the upgrades that
15 are going to be contributed by the customer
16 association will be, and also what the
17 availability charge impact is. And we would
18 propose that, if the evidence leads to the need
19 for some adjustment in that rate, an order of
20 notice would be issued at the conclusion of this
21 proceeding, and that it would apply, you know,
22 thereafter. I mean, there would have to be a
23 proceeding to address that, or an order of notice
24 in this proceeding.

1 CHAIRWOMAN MARTIN: Okay. Thank you,
2 Mr. Richardson. Mr. Gearreald.

3 You're on mute. Can't hear you.

4 MR. GEARREALD: Hi. Can you hear me
5 now?

6 CHAIRWOMAN MARTIN: Can hear you now.

7 MR. GEARREALD: Thank you.

8 I just wanted to add that the
9 sufficiency of the system that's proposed to be
10 taken over of Wiggin Way was not, in fact,
11 addressed at the DES level. What was addressed
12 there simply was making the permanent -- the
13 connection -- interconnection that was only to
14 supply water permanent. Now, we're talking about
15 something different, which is the acquisition of
16 a 22 year-old system, that may or may not need to
17 be replaced at some point in the future.

18 The costs that are being proposed to be
19 provided by Wiggin Way itself are only to meter
20 the individual customers. They're not to replace
21 the distribution system that would be inherited.
22 And we don't want the existing customers of
23 Hampton and North Hampton to bear the costs of
24 upgrading that system in the near future. And

1 that's one of our interests here.

2 And I thank you.

3 CHAIRWOMAN MARTIN: Thank you. I think
4 I have a full understanding of that.

5 I saw Mr. Tuomala's hand, and now I see
6 Mr. Reimers. And then, I do want to move on,
7 because we have a lot to cover on the other
8 issues today as well.

9 Mr. Tuomala.

10 MR. TUOMALA: Thank you, Madam
11 Chairwoman. I think I was waving my hand
12 inadvertently. So, I'm all set right now.
13 Thanks.

14 CHAIRWOMAN MARTIN: Okay. Mr. Reimers.

15 MR. REIMERS: Yes. Just a quick
16 response to Mr. Gearreald's statement just now.

17 At the Water Council hearing, I believe
18 Carl McMorran did testify, and there was quite a
19 bit of time devoted to what shape the Wiggin Way
20 system is. And I believe that the testimony was
21 that the Wiggin Way system is younger and it's in
22 better shape than a lot of other parts of the
23 Aquarion system.

24 But I don't need to go further down

1 that road at this point.

2 CHAIRWOMAN MARTIN: Thank you,
3 Mr. Reimers.

4 All right. Now, I want to move on. We
5 have the Wiggin Way/Winterberry Homeowners'
6 Association intervention as well.

7 Mr. Reimers, would you like to speak to
8 that?

9 MR. REIMERS: Yes.

10 I believe we are entitled to mandatory
11 intervention, in that, you know, we are the
12 subdivision at issue here. It is the Wiggin Way
13 customers that are affected here. They're the
14 ones who have been dealing with quantity and
15 quality issues since at least 2003, and have been
16 the subject of, you know, the DES order,
17 obviously, the appeal. The Wiggin Way customers
18 have been involved -- or, Wiggin Way and its
19 customers have been involved and participated
20 heavily at every step of the way, given their
21 large interest in this, substantial interest in
22 this.

23 And, so, I haven't seen any objection
24 to Wiggin Way's intervention. So, if there is an

1 objection, I reserve the right -- the opportunity
2 to respond. But I don't know that you need to
3 hear from me more right now.

4 CHAIRWOMAN MARTIN: All right. Thank
5 you. Is there any objection?

6 MR. RICHARDSON: Not from the Town of
7 North Hampton.

8 CHAIRWOMAN MARTIN: Okay. I don't see
9 any objection from anyone else on the screen.
10 So, I will grant the intervention of Wiggin Way
11 and Winterberry Homeowners' Association, based
12 upon a clear demonstration that their rights may
13 be affected by this proceeding. And I find that
14 the interest of justice and the orderly and
15 prompt conduct of these proceedings will not be
16 impaired by allowing that intervention.

17 I'm going to take the other two under
18 advisement and we'll issue an order on those.

19 And the only remaining question is,
20 Department of Environmental Services, we got a
21 "limited appearance". I'm just wondering if DES
22 is going to be intervening?

23 MR. ASLIN: Thank you, Madam
24 Chairwoman. DES does not intend to intervene.

1 We're just going to monitor this docket, and we
2 have a preliminary statement to provide
3 *[inaudible audio]*.

4 CHAIRWOMAN MARTIN: All right. Thank
5 you.

6 *[Court reporter interruption due to*
7 *audio issues.]*

8 MR. ASLIN: I can restate. I will get
9 louder. I don't think I can get any closer
10 without actually tasting the microphone.

11 DES does not intend to intervene in
12 this docket, merely to monitor, and to provide a
13 brief preliminary statement later in this
14 proceeding.

15 CHAIRWOMAN MARTIN: All right. Thank
16 you.

17 We also have a motion filed by the Town
18 of Hampton. But I think what I'd like to do is
19 to just hear from the parties as part of their
20 positions related to that. There's a request for
21 a hearing. And I think we did hear some
22 discussion of that from Mr. Richardson already.

23 So, why don't we move on now to the
24 initial positions. And start with Mr. Fossum.

1 MR. FOSSUM: Thank you. I'll defer to
2 Ms. Chiavara to deliver the position for
3 Aquarion.

4 CHAIRWOMAN MARTIN: Okay. Go ahead,
5 Ms. Chiavara.

6 MS. CHIAVARA: Yes. Thank you. And
7 some of these issues have been referenced to
8 various degrees, but I ask everyone's patience
9 that the Company wants to get all of the matters
10 in the Commission's Order of Notice on the
11 record. So, just bear with us for a moment.

12 The New Hampshire Department of
13 Environmental Services, or DES, issued Order
14 Number 17-006 WD over four years ago, directing
15 Aquarion Water Company of New Hampshire to
16 temporarily and then permanently connect the
17 residents of the Wiggin Way subdivision in
18 Stratham, New Hampshire, to the Aquarion water
19 system.

20 The provision of the DES order that
21 creates -- that directs Aquarion to make its
22 interconnection to Wiggin Way permanent only has
23 one condition precedent, that the PUC approve an
24 expansion of Aquarion's franchise service area.

1 The Company is here as a necessary part of that
2 DES mandate, to seek Commission approval of the
3 expansion of Aquarion's franchise, executing the
4 final remaining prerequisite to Aquarion
5 following through on its obligation contained in
6 the DES order. This filing has been pending in
7 this venue for more than eight months, after
8 having completed a comprehensive DES process some
9 time ago.

10 Aquarion strongly asserts the need for
11 a swift resolution to this proceeding, and urges
12 the Commission to enable such ends by authorizing
13 the expansion that was ordered by DES years ago.

14 All of the factual considerations the
15 Commission needs to approve this franchise
16 expansion can be found in that order. Though,
17 there are now additional facts since the order's
18 issuance that further support expedient approval.

19 The DES order is unambiguous and
20 directly resolves the matters raised in the
21 Commission's Order of Notice. And, while the
22 Commission enumerated a list of provisions in its
23 May 10th Order of Notice for this docket, in an
24 effort to define the regulatory scope for this

1 franchise expansion request, extending this
2 proceeding by broadening the scope of inquiry to
3 include any of the provisions in the Commission's
4 Order of Notice would be contrary to the clear
5 mandate of the DES order, and create additional
6 and unnecessary delay in direct detriment to the
7 public good.

8 Aquarion makes its recommendation at
9 this time that none of these issues apply here,
10 and, in fact, would constitute inappropriate
11 scope for this proceeding.

12 First, an overarching statement
13 regarding the question in the Commission's notice
14 of whether Aquarion has met certain requirements
15 for franchise expansion under RSA 374, Section
16 22? Following the Commission's own logic in
17 Order Number 26,016, regarding DES authority,
18 Aquarion should not only be allowed to expand its
19 franchise into the requested area, it is required
20 to do so. Order 16,016 recognized the authority
21 of DES pursuant to RSA 485, Section 4, I, to
22 order the temporary connection of Wiggin Way to
23 Aquarion's system, and the same statutory
24 provision applies to making that connection

1 permanent, an action which DES has also mandated.

2 Additionally, DES found in its orders
3 that all of the conditions of RSA 485, Section 4,
4 II, had also been met. RSA 485, Section 4, II,
5 when satisfied, not only permits but directs DES
6 to order the extension and connection from an
7 area of impaired water to the existing public
8 water supply identified by DES, regardless of
9 service area boundaries. DES applied its
10 findings of RSA 485, Section 4, II, by ordering
11 both the temporary and permanent connections of
12 Wiggin Way to the Aquarion system, an action
13 fully supported by the findings of Commission
14 Order 26,016.

15 Aquarion believes the DES order
16 preemptively resolves consideration of the
17 regulatory provisions raised in the Commission's
18 Order of Notice, and also answers many of the
19 other questions posed, providing support for why
20 the regulatory provisions posited by the
21 Commission should not apply or are already
22 satisfied by the DES order itself.

23 Taking those provisions in the order
24 presented in the Commission's notice, yes, the

1 first, RSA 374, Section 22, III, requiring
2 evidence of Aquarion's suitable and adequate
3 water supply, has been explicitly found in the
4 affirmative by DES in its order. That finding
5 was not qualified to apply only to the temporary
6 connection, but generally to the connection of
7 Wiggin Way to Aquarion's system. And the fact
8 that Aquarion has been serving the Wiggin Way
9 customers for years supports DES's conclusion
10 that the supply is, in fact, adequate.

11 And, as a practical matter, the
12 addition of 43 residential customers would not
13 be, and, in fact, has not been, impactful as to
14 the adequacy of that supply.

15 The issue of whether franchise
16 expansion is "for the public good", as required
17 by RSA 374, Section 26, is also answered by the
18 DES order that was issued pursuant to RSA 485,
19 Section 4, I. The purpose of which is to ensure
20 fitness and safety and adequate protection of the
21 public health. The authority of RSA 485, Section
22 4, I, as applied here, satisfies the "public
23 good" requirement of RSA 374, Section 26.

24 As to whether RSA 374, Section 30 would

1 apply, requiring Commission authorization for the
2 Company to acquire the Wiggin Way infrastructure,
3 it does indeed apply, but the condition for
4 Commission approval under this provision is
5 satisfied, as that condition is a finding of the
6 public good, the existence of which has just been
7 discussed. So, while Commission approval is
8 required under RSA 374, Section 30, it should
9 also be granted pursuant to that same provision.

10 Now, turning to whether RSA 374,
11 Sections 22 and 26 should include consideration
12 of any possible future rate impact from the
13 franchise expansion upon the utility's customers
14 in the existing franchise, that consideration
15 should only factor into this case to the extent
16 that such an impact would affect a finding of
17 public good created by the expansion. Here, the
18 public good has already been found by DES in its
19 order, so such a consideration need not take
20 place.

21 But should the Commission decide to
22 take possible future rate impact into account,
23 the Company has already asserted, and does so
24 again now, that any possible incremental costs of

1 operating and maintaining the Wiggin Way
2 expansion have been accounted for, as the Wiggin
3 Way system has been connected to Aquarion for
4 four years now.

5 What's more, Wiggin Way represents just
6 43 customers out of 9,500, and, in the four years
7 since the Wiggin Way interconnection, there has
8 been no discernable incremental costs to
9 Aquarion's operations. And, in fact, the
10 permanent connection of these customers would
11 offset the cost of service for existing
12 customers.

13 Moreover, Aquarion has a pending rate
14 case that's been referred to several times at
15 this point, where such matters may be addressed,
16 to the extent that they exist, once the
17 connection of Wiggin Way is completed as
18 proposed.

19 Therefore, as a matter of both law and
20 fact, the consideration of possible future rate
21 impacts to customers does not apply in the
22 instant case.

23 The next matter is whether customers of
24 the Company, in its existing franchise, have

1 standing? And, quite simply, they do not, as has
2 been made clear by the DES order, by this
3 Commission, and by the circumstances of this
4 matter. Aquarion has already objected to the
5 interventions of Hampton and North Hampton, and
6 would, and I believe already has, incorporated
7 those arguments by reference now.

8 Further, however, this Commission, in
9 Order 26,016, in finding that North Hampton
10 lacked standing for the temporary connection of
11 Wiggin Way, relied upon the DES assertion that
12 Aquarion has the capacity to service its existing
13 customers at the same time it provides service to
14 Wiggin Way, and that Aquarion's existing
15 customers include those in its entire service
16 area. The determination of DES regarding the
17 sufficient capacity of Aquarion did not just
18 apply to the temporary connection of Wiggin Way,
19 but to the permanent connection as well. So,
20 just as the Commission found that North Hampton's
21 rights and interests were not affected by the
22 temporary interconnection proceeding, neither
23 should the Commission find that existing --
24 customers in the existing franchise have rights

1 or interests at stake here. Nothing has changed
2 since the Commission's prior decision, and there
3 is no standing for intervenor status.

4 This is further evidenced by language
5 in the DES order, which refers to obtaining
6 requirements and approval from the Town of
7 Stratham and its Selectboard, as well as approval
8 from this Commission. But it makes no mention of
9 any requirement of approval by anyone in
10 Aquarion's existing franchise.

11 Now, with regard to rate schedules and
12 the Puc 1600 rules; such a filing is not
13 necessary. This expansion involves adding 43
14 residential customers that have been on the
15 Company's existing seasonal tariff, and upon the
16 Commission's approval of this request, would then
17 be transitioned to the Company's existing
18 permanent tariff. No new rate is being proposed.
19 No new or amended tariffs or tariff pages are
20 being proposed.

21 Further, as part of its pending rate
22 case, the Company will be amending its existing
23 tariff. Completing the instant transaction, as
24 proposed, will allow any changes, if needed, to

1 be incorporated into the overall tariff
2 adjustments. But any such changes and requisite
3 filings belong only in the rate case proceeding,
4 and not here. On a related note, moving the
5 Wiggin Way customers from one current existing
6 tariff to another is not the type of rate change
7 contemplated by RSA 378, Section 7, as that law
8 applies to the Commission fixing rates generally,
9 not merely to whether they apply to one group of
10 customers.

11 Aquarion's rates have already been
12 fixed by the Commission as just and reasonable,
13 and both rates that Wiggin Way would be subject
14 to, the current seasonal rate that they're
15 paying, and the existing permanent rate, have
16 been found to be reasonable by the Commission.
17 No one is proposing in this matter that a new
18 rate be set. To the extent that new rates would
19 be set through Aquarion's pending rate case, that
20 is the only proper forum for applying RSA 378,
21 Section 7, namely, to rates charged to all
22 customers, including those in Wiggin Way.

23 The Commission's final question is
24 whether a possible rate subsidization could be

1 created by a franchise expansion in violation of
2 RSA 378, Section 10? The short answer to that
3 question is "no". While the Company acknowledges
4 that there may be some set of circumstances, of
5 which the Company is not aware, that could rise
6 to some degree of subsidization, none of those
7 circumstances exist here.

8 As Aquarion has stated in its position
9 of this proceeding, which is supported by the
10 attachments that include the Asset Transfer
11 Agreement between Wiggin Way and Aquarion, all
12 costs created by this expansion, including any
13 tax burden generated, will all be borne by the
14 customers of Wiggin Way.

15 Relatedly, and as previously mentioned,
16 all rate-related issues should be raised in and
17 addressed as part of Aquarion's active rate case,
18 and not in this matter, where there are no open
19 issues of fact, and the matter at hand is simply
20 to fulfill a state agency mandate that resolves a
21 hazard to public health, which should not be
22 unduly delayed, but resolved as expeditiously as
23 possible. Rate-related issues have no place
24 here.

1 Approving the franchise expansion and
2 applying the permanent rate tariff to Wiggin Way,
3 for equity among Aquarion's customers, as well as
4 the reasons just stated above, are in the public
5 interest and are just and reasonable. The
6 Company strongly recommends an appropriately
7 focused scope for this docket, in the interest of
8 justice and the orderly and prompt conduct of
9 this proceeding.

10 Thank you.

11 CHAIRWOMAN MARTIN: Thank you,
12 Ms. Chiavara. Okay. Attorney Aslin.

13 MR. ASLIN: Thank you, Madam
14 Chairwoman.

15 On behalf of the New Hampshire
16 Department of Environmental Services, that I want
17 to just reiterate what was submitted in the prior
18 docket, which I think has been moved over to this
19 one, which is a letter of February 12th, 2021, of
20 the Department granting permanent. And, in
21 essence, the statement is that many of the
22 issues, the factual issues underlying this case,
23 have been addressed in the DES order, which was
24 appealed and adjudicated before the Water

1 Council, and, at this point, is a final order.
2 It was upheld by the Water Council. It was not
3 appealed further by either of the towns, and is
4 therefore a final order.

5 And, from the Department's perspective,
6 the Department of Environmental Services, their
7 perspective, those facts have been determined in
8 that administrative proceeding, and should not be
9 relitigated in this matter.

10 And I think the primary fact is the
11 finding of an adequate supply of water to supply
12 the Wiggin Way Homeowners' Association customers.
13 That issue I have noted has been raised by the
14 town, at least one of the towns here, but it has
15 been adjudicated in the final order at the DES
16 level.

17 Other than that, the point that the
18 Department of Environmental Services wants to
19 make is that it is still an important public
20 issue of concern that this water supply -- this
21 community have access to clean and an adequate
22 water supply, which is why the findings were made
23 under RSA 485:4, Paragraph II, and that support
24 the need for this connection on a permanent

1 basis. The Department of Environmental Services
2 supports the Petition by Aquarion, which is, as
3 stated by many, something that was mandated by
4 the DES order.

5 Beyond that, the Department of
6 Environmental Services takes no position on
7 anything having to do with rates, and that this
8 is the purview of this Commission. And, as I
9 said before, does not plan to intervene as a
10 party, but will be monitoring the docket. And I
11 would ask that I be added to the service list, if
12 I haven't been already.

13 Thank you.

14 CHAIRWOMAN MARTIN: Okay. Thank you.
15 I just want to ask you one question.

16 I understand what you're saying about
17 the prior findings, particularly related to the
18 availability of water under 374:22. Is it also
19 your position that the "public interest" and
20 "public good" findings have essentially already
21 been made by DES or are those left to the
22 jurisdiction of the Commission?

23 MR. ASLIN: Madam Chairwoman, I would
24 say that the Department of Environmental Services

1 has made its own "public good" determination
2 under 485:4. Whether that supersedes or has a
3 role in the Department's -- or, I'm sorry, the
4 Commission's findings under its own statutes, the
5 Department of Environmental Services does not
6 take a position there. But I would agree that a
7 "public good" -- the equivalent of a "public
8 good" finding was made by the Department of
9 Environmental Services in its own administrative
10 process.

11 CHAIRWOMAN MARTIN: Okay. Thank you.
12 All right. Mr. Tuomala.

13 MR. TUOMALA: Thank you, Madam
14 Chairwoman.

15 I will first address the initial
16 Petition by the Company, the Department's
17 position, and then I'll move on to what the Town
18 of North Hampton proposed in its motion regarding
19 rate schedules and a rate hearing.

20 It's the Department's understanding
21 that it's a franchise expansion, and the
22 authority for that would be 374:22 and 374:26
23 that was spoken to. The Department is a little
24 less convinced than fellow counsel over at

1 Aquarion that the DES finding is automatically a
2 finding of "public good", so it would somewhat
3 supersede the PUC's authority. The Department's
4 position would be that it is a plenary power of
5 the PUC under 374:22 and 374:26.

6 So, the PUC could take those findings
7 into account, give the weight that it deserves,
8 especially as a sister agency. But the
9 Department does not believe that it is a forgone
10 conclusion made by the DES that the PUC would
11 simply adopt.

12 In review of the initial Petition as
13 well, the Department notes that Aquarion is
14 requesting approval of the Transfer Agreement
15 pursuant to 374:30. And the Department, at this
16 time, it's position would be we would need to
17 further explore that in discussions after the
18 prehearing conference, possibly through
19 discovery. The Department notes that 374:30
20 applies to public utilities and a transfer, and
21 Wiggin Way is a private ownership association
22 donating its property to Aquarion. So, that
23 would need to be fleshed out. We don't have a
24 position on that right now.

1 And, again, we would certainly be
2 looking into 374:22 and 374:26 and those
3 statutory standards, and in the context of the
4 prior DES order. But, again, I believe that the
5 Commission would still need to undergo its own
6 investigation, given the facts and circumstances
7 at hand.

8 Turning to North Hampton's motion, one
9 for a hearing regarding rate change, the
10 Department is not convinced that, in this
11 situation, a rate hearing is required. 378:3
12 regards change in rates, as has been pointed out
13 by other counsel prior. This is not a rate
14 change, *per se*. This is implementation of a
15 different rate in its already approved tariff,
16 which was approved in Order Number 25,539, back
17 on June 28th of 2013. So, these are existing
18 rates. And the only fact that the seasonal rates
19 were applied is because the PUC previously
20 ordered Aquarion to apply its seasonal rates.

21 If this had been a new customer who
22 tied onto the system, Aquarion would simply be
23 applying its current tariffed rates of permanent
24 rates, if that customer were a permanent

1 resident. If it were not, it would be a seasonal
2 rate. There would be no adjudication of a rate.
3 It would be implementing simply its already
4 approved tariff, which is the case here. And the
5 Department does not feel that it's a "rate
6 change" pursuant to the statutes that requires a
7 hearing to determine that rate. It's already
8 been established.

9 Moving onto the request that Aquarion
10 file the rate schedules pursuant to Puc 1600, the
11 Department disagrees with that request. It would
12 be considered overly burdensome in this instance.
13 Essentially, every franchise action would require
14 a mini rate case. And looking back in the
15 Commission's history in the prior five years,
16 there has been no evidence that the Department
17 has found that any such rate schedules were ever
18 offered or required by the Commission in a
19 franchise either exchange or expansion request.

20 And those, the creation of those
21 schedules, are time-consuming and burdensome,
22 which eventually would probably fall to
23 ratepayers. And not -- it's not an investigation
24 that's necessary at this point. That's better

1 held for a rate case, and, again, as stated,
2 which Aquarion is undergoing right now and have
3 filed those 1600 schedules.

4 So, the Department would be concerned
5 of setting a precedent of allowing or mandating
6 that companies, every time that they come in for
7 a franchise expansion, need to file rate case
8 schedules. That would be overly burdensome from
9 the point of the utility, and for ratepayers, and
10 for the regulatory process itself.

11 We, the Department, would consider
12 this -- Department of Energy, excuse me, would
13 consider this more akin to a franchise boundary
14 exchange. If you look at Docket Number DT
15 20-100, Docket DE 19-184, Docket Number DE
16 19-073, those were franchise exchanges between
17 two utilities, where one utility assumed a small
18 portion of another utility's franchise area.
19 Well, different from this instance, because there
20 is no other utility servicing Wiggin Way at this
21 point. There were no rate schedules. There
22 wasn't even a rate impact involved. It was
23 simply the assumption by a utility of a small
24 customer base, such as this, with 43 customers,

1 and applying its own already approved tariff.
2 And, in those instances, the Commission did not
3 consider rate impact, didn't entertain rate
4 schedules. The evidence submitted by the
5 utility, and reviewed by Staff, was simply it was
6 more cost-effective because they were closer to a
7 substation, or it was less costly to just assume
8 those customers.

9 And I think that is a similar situation
10 here. Where this customer group has been ordered
11 by DES to assume water service by Aquarion. And
12 the next logical step is a franchise expansion
13 approval to formalize their service, as required
14 by 374:22 and 26. So, --

15 CHAIRWOMAN MARTIN: Mr. Tuomala?

16 MR. TUOMALA: Yes.

17 CHAIRWOMAN MARTIN: I apologize for the
18 interjection. Just want to clarify on the three
19 dockets you pointed to.

20 MR. TUOMALA: Yes.

21 CHAIRWOMAN MARTIN: Did those
22 involve -- also involve transfer of the assets
23 and acquiring infrastructure?

24 MR. TUOMALA: I do not believe they

1 did.

2 CHAIRWOMAN MARTIN: Okay. Thank you.

3 MR. TUOMALA: But I am not 100 percent
4 certain on that, Madam Chairwoman. I apologize.

5 I also note that I believe the Town of
6 Hampton suggested that a cost of service study be
7 submitted into this case as well. And that is
8 another point that the Department would not be in
9 agreement with, considering cost of service
10 studies can range anywhere from \$40,000 to
11 \$80,000, a comprehensive cost of service study.
12 And the costs of that to be borne on a small
13 customer group, if that were the case, of 43,
14 would be outrageous. It's just there's too much,
15 in terms of financial information in this docket,
16 that is being requested, that, if you look at the
17 five-year history, at least at the PUC, it's not
18 required.

19 The closest to that would be Docket DG
20 15-362 and Docket DG 18-094, and those were both
21 gas dockets. Those were franchise expansions to
22 entire swaths of cities and areas much larger
23 than this, but it was also a consideration of
24 building new infrastructure. These were the

1 cases of the gas utilities that wanted to build
2 out millions of dollars of plant and assume a new
3 customer base, which, obviously, are a lot of
4 unquantifiable questions, as far as future
5 revenue. "How much is it exactly going to cost?"
6 "How many customers are you going to bring on
7 line?"

8 And, in those cases, the Commission did
9 consider some financial information, particularly
10 discounted cash flow information. But, again, it
11 didn't rise to the level of a rate case, number
12 one. And, number two, I think that that
13 financial information was necessary, because it
14 was starkly different from the proceeding at
15 hand. We have a quantifiable number of
16 customers. It's not a growing customer base.
17 They have been serving them for going on over
18 four years now.

19 So, that type of financial information
20 again is overly burdensome in the context of this
21 case. So, we would strongly suggest against
22 granting the motion from North Hampton to require
23 either rate schedules or to make this a rate
24 proceeding and that investigation.

1 Again, it's been offered, if there are
2 questions of rates, there's an ongoing rate case
3 at this moment in front of the Commission, and it
4 would be properly addressed in that docket, and
5 not in a franchise expansion docket. If allowed,
6 it could bog down the process for years to come.

7 And that is all that I have, Madam
8 Chairwoman. Thank you.

9 CHAIRWOMAN MARTIN: Okay. Thank you,
10 Mr. Tuomala. Mr. Reimers.

11 MR. REIMERS: Thank you, Madam Chair.

12 On March 29th, 2017, more than four
13 years ago, DES ordered Aquarion to connect the
14 Wiggin Way neighborhood to its system. And, at
15 the time, in 2017, that was what appeared to be
16 the culmination of 13 years of water and well
17 woes experienced by the residents. Since at
18 least 2004, the residents of Wiggin Way have
19 experienced quantity and quality issues, until
20 they were finally connected to the Aquarion water
21 system. The wells would stop producing water at
22 times, and Wiggin Way would need bulk deliveries.
23 Arsenic levels were very high. And despite the
24 Towns of Hampton and North Hampton blaming Wiggin

1 Way for these issues, DES ultimately concluded
2 that a permanent connection was the best way to
3 provide reliable and safe water to the residents.

4 So, after more than 13 years of issues
5 of quantity and quality, DES's 2017 order finally
6 paved the way for the residents of Wiggin Way to
7 get out of running a water system, and finally
8 have clean, reliable, and sufficient water.

9 DES made all of the findings required
10 by RSA 485:4. And those findings are that the
11 Department determines that an extension of water
12 service from an existing public water supply is
13 the most feasible and cost-effective alternative.
14 Second -- and here, it was the most feasible and
15 cost-effective, because the actual distance
16 between the existing Aquarion system and Wiggin
17 Way was only 50 feet. So, even though Wiggin Way
18 is in Stratham, the connection only required an
19 extension of 50 feet.

20 The second criterion that DES found was
21 that the coextension is -- the extension is
22 consistent with municipal master planning, local
23 water policy, system policies and rules, and RSA
24 9-B and 162-C:2. DES had found, and the Water

1 Council upheld that finding.

2 And the third criterion that DES found
3 was that, as Attorney Aslin alluded to, was that
4 an existing public water system has adequate
5 water supply and system capacity to serve the
6 problem area. And DES found that all of these
7 were satisfied, and so issued its order.

8 And the statute 485:4 goes on to say
9 that, if DES finds that these criteria are met,
10 "the public water system shall be ordered to
11 allow connection regardless of existing public
12 water system service area boundaries."

13 The Towns of Hampton and North Hampton
14 appealed DES's order to the Water Council. And
15 the basis that they asserted in their Notices of
16 Appeal was that the addition of 43 homes would
17 adversely impact Aquarion's ability to provide
18 enough water to Hampton and North Hampton, and
19 other existing customers. The Water Council held
20 a four-day hearing, over several months, that
21 ended on July 16th, 2019, two years ago.

22 During the hearing, on the witness
23 stand, North Hampton Town Manager, Fred Welch,
24 frankly, stunned us and the other parties, and I

1 think the Council, by acknowledging that,
2 contrary to the Notice of Appeal assertions, that
3 the addition of 43 homes will not have an effect
4 on the ability of Aquarion to provide North
5 Hampton with water. And Mr. Welch went on to say
6 that the purpose of the appeal was to prevent the
7 expansion of the franchise, and therefore to
8 prevent Stratham from having any say before the
9 PUC on matters involving Aquarion.

10 So, at the conclusion of the hearing,
11 the Water Council opened deliberations. And the
12 first thing that happened, before a discussion of
13 who was right and who was wrong, and the facts
14 and the evidence submitted, was a member of the
15 Water Council made a motion, that was the first
16 thing that happened, a motion to uphold DES's
17 order, and the motion passed unanimously. And
18 deliberations were over, the quickest
19 deliberations I've ever seen in any judicial
20 forum.

21 So, here we are, over two years later,
22 North Hampton and Hampton making similar
23 arguments as they did in the 2017 appeal. They
24 complain about lawn watering, yet they do not

1 acknowledge a lawn watering ban that has been in
2 effect for years.

3 In their joint statement, the Towns "do
4 not object to water service being provided to the
5 residents of Wiggin Way provided that supply is
6 adequate and rates are sufficient to cover the
7 costs to these customers."

8 Well, in the Water Council hearing, the
9 Towns presented voluminous documents and
10 extensive testimony about Aquarion's capacity to
11 provide the water. And the issue of adequacy was
12 settled by the Water Council and should not be
13 relitigated here.

14 The remaining issues raised by the
15 Towns should be addressed in the rate case
16 docket, as many of us have said here today,
17 rather than continuing the years-long uncertainty
18 that the residents of Wiggin Way have endured.

19 We are here at the PUC, from our point
20 of view, in this docket, for an expansion of
21 Aquarion's franchise to comply with a DES order.
22 Issues of rates should be addressed in the rate
23 case.

24 So, therefore, we respectfully request

1 that the PUC quickly approve Aquarion's Petition.
2 It's been almost four and a half years since DES
3 ordered the permanent connection, and the
4 residents of Wiggin Way really need resolution.
5 In addition to the lingering uncertainty, Wiggin
6 Way continues to incur significant expenses that
7 will go away once the PUC approves this franchise
8 expansion.

9 So, let me just go into some of the
10 costs, additional costs that Wiggin Way has
11 endured over the years. First, Wiggin Way was
12 paying seasonal -- higher seasonal water rates
13 than the regular customers. Wiggin Way has paid
14 thousands of dollars in WICA charges, without the
15 corresponding benefits. And these payments have
16 benefited Hampton and North Hampton. The 43
17 homes in Wiggin Way are still on one meter, which
18 will change once the PUC approves the expansion.
19 And, by the way, Wiggin Way will be paying for
20 those meters, and the installation of those
21 meters.

22 But what this means, by them being all
23 on one meter, is that, for example, a married
24 couple, with no children at home, would pay the

1 same amount for water as a family with four
2 teenagers. So, please just make the residents of
3 Wiggin Way normal customers, who will pay their
4 *pro rata* share of water that they use.

5 Until this is approved, the franchise
6 is approved, Wiggin Way has to continue to
7 operate its community water system. And this
8 entails paying fees to DES, paying Pennichuck to
9 manage the system, and every year several rounds
10 of samples need to be sent to DES for testing.
11 And it costs approximately \$12,000 a year to run
12 this system, which Wiggin Way does not even use
13 right now, and will not have to continue to
14 operate once the expansion of the franchise is
15 approved.

16 As far as water costs -- monthly water
17 costs go, each home in the neighborhood pays
18 about \$100 a month, or \$1,200 a year, for all
19 water-related costs to Aquarion, Pennichuck,
20 testing, all of that. And this is about twice --
21 that's \$1,200 a year, more than twice the average
22 cost per household in New Hampshire. Many of
23 these costs will go away once the franchise is
24 approved. And this has been going on for years.

1 I won't go on about the rate case.
2 We're all very aware of the existence of the rate
3 case.

4 We submit that there is no need for
5 discovery or an evidentiary hearing in this
6 matter. Whether -- and we are here just to seek
7 expansion of the franchise. Please provide the
8 resolution that the residents need.

9 We thank you for granting Wiggin Way's
10 Petition to Intervene. And we request that North
11 Hampton's motion for a hearing on rates be
12 denied. That both Towns' Motions to Intervene be
13 denied.

14 Add one more thing on costs. You know,
15 I think Attorney Fossum mentioned this. That
16 this connection will entail significant costs for
17 Wiggin Way. All the costs of connection,
18 according to the Asset Transfer Agreement, are
19 borne by Wiggin Way. Which, obviously, the
20 residents aren't thrilled about, but are thrilled
21 about finally resolving this and having a
22 permanent connection.

23 There's a cost of up to \$20,000 to
24 bypass the pump station. There is a 29, almost

1 \$30,000 gross-up tax costs related to the Tax
2 Cuts and Jobs Act of 2017. And there's the cost
3 of metering. So, these costs are not being
4 shifted to Hampton, North Hampton, Rye, and any
5 other customers of Aquarion. There are
6 significant costs that Wiggin Way will have to
7 bear among 43 households, that are in addition
8 to all of the additional water-related costs
9 that we are now paying, until this franchise is
10 expanded.

11 Thank you very much.

12 CHAIRWOMAN MARTIN: Thank you, Mr.
13 Reimers.

14 And, for the Towns, we will treat
15 you -- we took the Motions to Intervene under
16 advisement. So, we will treat you as parties,
17 just for purposes of today and today's technical
18 session.

19 So, Mr. Richardson, if you'd like to
20 proceed with your position.

21 MR. RICHARDSON: Thank you, Madam
22 Chair.

23 We've, obviously, submitted our
24 statement in writing. I thought it would be

1 helpful to do that. I will try to focus my
2 comments now on some issues that have been raised
3 here today.

4 But I think it's important to step
5 back, and we cited to several proceedings -- and
6 I'm sorry, but before I even get to that, you
7 know, there's an argument to move as quickly as
8 possible. And I'm a little unsure that there is
9 the level of urgency that is argued for, because
10 the system is currently connected. It's
11 currently receiving water, and sufficient water,
12 that complies with all of the DES standards.
13 There's no emergency. So, let's put that on the
14 table to start with. We can treat this franchise
15 expansion the way we would any other.

16 It's very clear to me, having been
17 involved in proceedings before at DES, that DES
18 makes a number of technical determinations about
19 adequacy of supply. But the one thing that they
20 don't do is is they don't look at fire protection
21 rates, they don't look at the actual rates for
22 service in their analysis.

23 So, they have made a determination, and
24 that determination was clearly evidence of public

1 good. We're not here to oppose the acquisition
2 we're here to make sure that the rates are set
3 appropriately, as is consistent with both the
4 "public good" standard and the ratemaking
5 standards of RSA 378:7 and RSA 378:10. And those
6 standards are ongoing. In other words, a rate
7 could be just and reasonable when it is set.
8 But, then, at some point, circumstances could
9 change. There could be new customers added. The
10 system could be in worse shape than it is. There
11 is always an opportunity to reexamine whether a
12 rate that's in effect today is the appropriate
13 one.

14 And I think the -- many of the parties
15 are overlooking that. And I think I can't stress
16 that enough, is is that we have a new system
17 that's being connected. We're changing from a
18 seasonal rate to a different rate. And, in any
19 proceeding where something like that is
20 happening, there is always a question of "is that
21 rate" -- "is that change just and reasonable?" I
22 don't think there's any dispute that there is a
23 change. Most of the argument has been that it's
24 unduly burdensome to prepare all of the rate

1 schedules. Well, I would tend to agree with
2 that. And that is why, in North Hampton's
3 Statement of Position, we suggested that, even if
4 RSA 378 applies, and the Commission -- the
5 question is is "what information would you look
6 to?" Well, I'm not suggesting that all of these
7 documents are needed. There are clearly some
8 information that is more relevant and that is
9 really important.

10 For example, we've heard Attorney
11 Reimers refer to "significant costs", "meter
12 costs", there may be others. There's currently
13 the operations and maintenance costs. Some costs
14 are going to be assumed as part of the
15 acquisition.

16 But what are the costs going forward?
17 Typically, a utility will have capital budgets,
18 have engineering analysis. They will review this
19 information. We can look at the numbers and find
20 out what those costs are.

21 The same is true for the lack of
22 availability charges that are not being accounted
23 for here. And that, if we were to proceed
24 immediately and push everything to the rate case,

1 well, there's no opportunity in the rate case to
2 develop a different charge for Wiggin Way, if
3 that is required. Because every other
4 municipality which Aquarion is operating in, I
5 believe, Rye, Hampton, North Hampton, there are
6 substantial availability or fire protection
7 charges that are being paid. And we're only
8 trying to do what's fair here. I hope that's --
9 despite what you may have heard, that's the goal.
10 And that's the limit what this Commission -- the
11 Commission can do.

12 Now, in an acquisition proceeding, the
13 cases we've cited, I'm looking at the Hampstead
14 Area Water Company, in 2019, the Company looked
15 at -- excuse me, the Commission looked at a rate
16 that changed from one approved rate, which was a
17 wholesale contract, and the Company switched it
18 to its two-inch meter rate, which was an
19 existing, approved rate. And that was Order
20 Number 26,301, dated October 22nd, 2019. This
21 Commission actually admonished the company in
22 that case for making that switch without getting
23 approval from the Company **[Commission?]**.

24 And that's all we're saying here is is

1 "Look, we're doing a change here. It requires
2 some level of rate approval." What the scope of
3 the documents we look at? That's an open
4 question. And we expect Aquarion knows how to
5 prepare a waiver request, can identify the
6 information that it has that would support it.
7 We're saying the information should be provided,
8 so that it's available for the parties, we can
9 review it, and we can ultimately determine that
10 this proceeding is in the public good, and that
11 the resulting rates would be reasonable and not
12 result in any undue preference or subsidy.

13 There's an interesting, and I think an
14 important, ramification in the Company's
15 suggestion that you can just switch from one rate
16 to another without Commission approval. All
17 utilities have approved rates. Those are the
18 only ones that they can charge. What happens
19 when a utility is acquired by another utility,
20 and can that utility simply change from the
21 selling utility's rate to the acquiring utility's
22 rate? I don't think it can. I think, even
23 though the rate is approved, when the customer
24 hasn't -- I mean, we're not talking about

1 customer changes, where you have a residential
2 house, and they open up a brewery, well, clearly,
3 that would be a customer change that would
4 justify the switch from one class to another,
5 because it would be the customer's use that's
6 driving it. What's driving it here is the
7 utility's desire to charge a different rate. How
8 we review that is less important than the fact
9 that it actually be reviewed.

10 And there's a case that is also, I
11 think, important, having heard the arguments on
12 the other side, to consider, and that is the
13 *Appeal of Milford Water Works*. It was cited by
14 this Commission in the Pennichuck Water
15 acquisition proceedings, which went before the
16 Supreme Court in 2010. I don't have the citation
17 in front of me. But what the *Appeal of Milford*
18 *Water Works* says is is that this Commission, when
19 it exercises any statutory authority it has, and,
20 clearly, it has authority under 374:22, 374:30 to
21 review this, this transaction, it can impose
22 conditions designed to protect and promote the
23 public interest. And we would suggest that,
24 within the scope of this Commission's review, as

1 we've said in our Petition to Intervene for North
2 Hampton, it's appropriate to look at whether the
3 rates cover the costs of operating and
4 maintaining the system.

5 We heard today that the system is
6 currently paying \$12,000 for what I would
7 understand to be a certified operator. That's a
8 cost that's going to be transferred from the
9 Wiggin Way system to all of the customers.

10 If this -- now, the acquisition cost
11 that was referred to, those are going to be paid
12 as a contribution in aid of construction. But
13 I'll remind you, and everyone, that, once an
14 acquisition has occurred, the acquisition
15 agreement goes away, and the utility assuming the
16 obligation to provide service under RSA 374:1 is
17 to provide service that's just and -- excuse me,
18 reasonably safe and adequate. So, if one of
19 these mains breaks, and there's not a budget
20 that's already been agreed to as part of the
21 acquisition, that means the cost to upgrade that
22 system is going to be borne by the other
23 customers.

24 As I said, I've alluded to numerous

1 times already, I won't repeat, the availability
2 of the water that is used by these systems is
3 going to take away from what's being paid for as
4 part of fire protection, and what has been paid
5 for for many, many years. The rate currently, I
6 believe, is \$849,000. We cite that in our
7 positions. That's been paid year after year
8 after year. It's been adjusted due to WICA. But
9 it is a substantial amount of money. And any
10 change in that, due to a loss of supply, and
11 residential consumption is increasing, we've been
12 through droughts. Fortunately, we have some rain
13 now. But we've been very close to running out of
14 that supply.

15 And what that means is is, in a rate
16 case, we look at what the maximum demands are,
17 and it's the maximum demand that drives costs.
18 Because, under the DES rules, you have to
19 evaluate what the maximum supply is with the
20 largest well out of commission. And, so, on the
21 Seacoast, we don't have a lot of water. And
22 everything that contributes to maximum demand
23 increases what's required for fire protection, it
24 drives Hampton and North Hampton's costs up.

1 And all we're asking is that this
2 Commission look at that issue. Let's have
3 discovery. Let's find out what the rate should
4 be, let's find out what the costs are, and make
5 an appropriate decision. That's not an
6 unreasonable thing to ask, given the information
7 that we know of today.

8 I'm reading through my notes briefly,
9 to make sure I've covered the issues.

10 Thank you. We look forward to working
11 with all the parties in the proceeding.

12 CHAIRWOMAN MARTIN: Thank you,
13 Mr. Richardson. Mr. Gearreald.

14 Mr. Gearreald, you're on mute.

15 MR. GEARREALD: There we are. Thank
16 you so much.

17 Thank you, Madam Chairman. I would
18 join in the comments made and in the Joint
19 Statement of Positions that has been submitted,
20 that I submitted on behalf of Hampton and North
21 Hampton.

22 And I would also like to add to what
23 Attorney Richardson has said, in response to what
24 has been stated as to what the effect of the DES

1 order has been. The DES order was the first in
2 which DES exercised its statutory authority under
3 RSA 485:4, as referenced by Attorney Aslin, to
4 extend a franchise beyond a territorial border
5 and to serve another community.

6 And, so, the DES order, which was
7 upheld by the Water Council, simply ordered that
8 the connection, the one connection that was
9 ordered by DES, be made permanent. And the
10 situation was that, under the temporary order,
11 there was one connection. After the DES order
12 became permanent, and was not appealed, we still
13 had one connection that is permanent.

14 This acquisition proceeding, however,
15 is different, because what is now being requested
16 is that Aquarion acquire a system of 43
17 distribution points, and that water be provided
18 through 43 different spots, rather than one spot.
19 And with that comes any costs attendant to
20 acquiring a 22 year-old undersized system. And,
21 therefore, what needs to be explored in discovery
22 and taken into account is what costs may be
23 involved in potentially having to replace or
24 reconstruct that system.

1 If you look at the Acquisition
2 Agreement, the Asset Transfer Agreement that is
3 Attachment E to the Petition, you will see that
4 there are certain costs, and Attorney Reimers has
5 referred to them, that Wiggin Way is going to
6 provide. One is the metering costs, that
7 so-called "interconnection", of \$26,927. That
8 does not cover whatever costs may occur if the
9 system breaks down, the distribution system. The
10 pumphouse bypass similarly does not cover that.
11 And the tax gross-up, \$29,777, does not cover
12 that cost.

13 We don't know what the system may
14 suffer when it is pressurized to deliver water
15 from Aquarion directly to 43 customers, and that
16 needs to be explored. We don't think Aquarion
17 itself necessarily knows what those costs may be.

18 If you look at the Bill of Sale, in
19 Schedule A, attached to the Acquisition
20 Agreement, it includes a transfer of hydrants.
21 Well, there are no hydrants. That's on Page 56.

22 So, Aquarion itself wants to roll the
23 dice, in terms of taking over this system. The
24 Towns of Hampton and North Hampton are not

1 comfortable rolling the dice. We know that, if
2 that system -- that distribution system breaks
3 down, subsequent to the connection, the cost is
4 going to be borne by the entire system, that
5 includes Hampton, North Hampton, and two Rye
6 water districts. That would be a subsidy. And,
7 therefore, we don't believe that that's been
8 adequately accounted for in the Acquisition
9 Agreement that's being asked to be approved.

10 And, so, that's an additional factor I
11 would like to add to the presentation by Attorney
12 Richardson.

13 Thank you so much.

14 CHAIRWOMAN MARTIN: Thank you,
15 Mr. Gearreald.

16 Do we have anyone from the public who
17 wishes to make a comment? Doesn't look like we
18 do.

19 *(Ms. Carmody indicating in the*
20 *negative.)*

21 CHAIRWOMAN MARTIN: Okay. Thank you.

22 Commissioner Goldner -- the
23 Commissioners do have some questions. Would you
24 like to take a brief break before we start?

1 *(Commissioner Goldner indicating in the*
2 *affirmative.)*

3 CHAIRWOMAN MARTIN: Okay. We'll take a
4 five-minute break, well, we'll make it seven.
5 We'll return at 10:55. Off the record.

6 *(Recess taken at 10:48 a.m. and the*
7 *prehearing conference resumed at*
8 *10:59 a.m.)*

9 CHAIRWOMAN MARTIN: Okay. Let's go
10 back on the record.

11 Commissioner Goldner.

12 COMMISSIONER GOLDNER: Yes. I just
13 have a few questions for understanding.

14 A question for Mr. Reimers. Who built
15 the Wiggin Way system in the first place?

16 MR. REIMERS: I'm sorry, I need to turn
17 off my air conditioner. I'm sorry, Mr.
18 Commissioner, what was the question? Who built
19 the system?

20 COMMISSIONER GOLDNER: Yes, sir.
21 That's right.

22 MR. REIMERS: Oh. Can I defer to Steve
23 Roy? Steve, are you on?

24 MR. ROY: Yes, I'm on. This is Steve

1 Roy, President of Wiggin Way Homeowners'
2 Association.

3 I don't even know the answer to that
4 question. There was a developer back in the year
5 2000 that built the development. I'm not sure
6 who actually installed the water system.

7 COMMISSIONER GOLDNER: Okay. Thank
8 you.

9 MR. REIMERS: If I might add, just in
10 response to some statements about
11 "pressurization".

12 To my understanding that, since we've
13 been connected to Aquarion, the system has been
14 subject to Aquarion's pressurization for several
15 years now without issue.

16 COMMISSIONER GOLDNER: Thank you. My
17 next question is about the physical connection
18 between Wiggin Way and Aquarion. I understood
19 from a point earlier that it was a 50-foot pipe.
20 What are the dimensions of that pipe? What, you
21 know, I think, is it above or belowground? Maybe
22 you could tell us a little bit more about that
23 connection?

24 MR. REIMERS: It's belowground, meaning

1 that it's -- and it's winterized.

2 As far as the diameter of the pipes and
3 all that, maybe Mr. McMorran is the person to
4 answer that.

5 MR. McMORRAN: Sure. There's a 4-inch
6 tap on a 12-inch main, on the Aquarion side, it
7 goes to a meter pit, and there's a 2-inch meter.
8 Then, that 4-inch pipe continues on to what was
9 the end of Wiggin Way's system, actually on
10 Winterberry Drive.

11 COMMISSIONER GOLDNER: Okay. And where
12 I'm going is, I understood at the beginning of
13 the hearing that there was a single pipe, a large
14 pipe, that connected to the Wiggin Way system.
15 And then, I heard later that there were 43
16 individual connections. So, I'm just trying to
17 sort out what the physical layout of the system
18 is?

19 MR. FOSSUM: Perhaps I can start. This
20 is Matthew Fossum. I can start, and I think Mr.
21 McMorran will probably correct me where I falter.

22 There is a single interconnection
23 between the Aquarion system, the interconnection
24 that Mr. McMorran just described. That is the

1 interconnection between the Aquarion system and
2 the Wiggin Way system. That, after that
3 connection, the piping then extends through the
4 Wiggin Way/Winterberry subdivision, and branches
5 off to serve each of the individual residences
6 there.

7 But, right now, so far as Aquarion is
8 concerned, it has a single interconnection with a
9 single meter point, and treats everything past --
10 and treats it as a single customer. But there
11 are individual services that run to each
12 residence that are beyond that meter, and are
13 presently beyond the franchise and service area
14 of Aquarion.

15 COMMISSIONER GOLDNER: Okay. And,
16 would you say, from an Aquarion standpoint, that
17 those connections, going from the Aquarion system
18 through or to the home would be what you would
19 install in a system, in a new system that you're
20 putting in today, or would it be different?

21 MR. FOSSUM: I would defer to Mr.
22 McMorran as to whether those present connections
23 are the same type and quality as what we would
24 install otherwise today.

1 MR. McMORRAN: We believe so, yes.
2 They're just coming off a smaller pipe than we
3 typically, you know, need to put in.

4 COMMISSIONER GOLDNER: Okay. And I'm
5 sorry, Mr. McMorrان, you're a little bit hard to
6 hear.

7 So, we have a large diameter pipe going
8 from the Aquarion system to the sort of branch
9 point, and then you've got, I think somebody said
10 earlier, 3-inch PVC going to each home.

11 Can you maybe just describe for us the
12 physical layout of the system? And I appreciate
13 that this is the same system that you would use
14 in new construction today.

15 MR. McMORRAN: Sure. I was trying to
16 call up a map. I don't know if it's possible for
17 me to share it or not. But --

18 CHAIRWOMAN MARTIN: Excuse me, Mr.
19 McMorrان. It is not possible for you to share
20 that.

21 MR. McMORRAN: Okay.

22 COMMISSIONER GOLDNER: That's okay. I
23 have it in front of me. Well, if it is a large
24 map, I have it in front of me.

1 MR. McMORRAN: Yes. The Wiggin Way
2 system comes out of almost a "central pumphouse",
3 I will call it, where the wells go in through the
4 treatment, and branches from there, you know, the
5 far eastern end of their system is right on the
6 Hampton -- or, the Stratham/North Hampton town
7 line, that's where we made the interconnection.
8 And each home has a connection off that. The
9 distribution pipe, a service line that goes to a
10 curb value, from then on into the house.

11 COMMISSIONER GOLDNER: Okay. Thank
12 you.

13 MR. RICHARDSON: Commissioner?

14 COMMISSIONER GOLDNER: Yes.

15 MR. RICHARDSON: If I may? There is a
16 schedule, and I'm looking at Bates Page 075.
17 It's the attachments to the Petition. So, it's
18 PDF Page 69, Schedule 1.1.3. It lists the length
19 of mains by size in the system. They're mostly 3
20 and 4. It does show some at 1.5 inches.

21 And I thought that was responsive to
22 your question and would be useful to look at.

23 COMMISSIONER GOLDNER: Thank you. I'll
24 look at it. Thank you.

1 MR. GEARREALD: May I just say that --
2 this is Mark Gearreald. I believe the point
3 should not be lost that what Aquarion would be
4 inheriting by way of a distribution system is
5 smaller than what it would require in a new
6 subdivision today. I think Carl can confirm
7 that.

8 MR. McMORRAN: Actually, the size of
9 the piping depends upon what kind of demands are
10 expected in a subdivision. We have actually
11 other streets with pipes of this size on it due
12 to various reasons. So, if it's going to support
13 fire protection, have to supply a hydrant or a
14 large fire service, then it would be a minimum
15 8 inches. But there are some places where that's
16 not necessary and the pipes are indeed smaller.

17 COMMISSIONER GOLDNER: Okay. Thank
18 you. And did I hear someone say earlier that
19 there's no fire hydrants in Wiggin Way and
20 there's no fire protection? And maybe somebody
21 could touch on that.

22 MR. FOSSUM: Yes, Commissioner. This
23 is Matthew Fossum again.

24 Yes. There are no fire hydrants in the

1 Wiggin Way subdivision system. Mr. Gearreald
2 before had referred to a note in the Agreement,
3 which is at Bates Page 092, that uses the word
4 "hydrants". But it says that it's "mains,
5 hydrants, and personal property described in
6 Schedule 1." And, if you turn the page down to
7 Schedule 1, you will see there are no hydrants
8 actually listed there.

9 So, that was sort of a catch-all
10 phrasing, but directing to a specific listing,
11 and in that listing there are no hydrants.

12 COMMISSIONER GOLDNER: And that, if I
13 understand, the proposal from Aquarion would be
14 to put in the fire hydrant or hydrants as
15 required, and that the folks who live in Wiggin
16 Way would pay for that, that enterprise?

17 MR. FOSSUM: It's my understanding that
18 there is no proposal presently to add hydrants to
19 that system.

20 COMMISSIONER GOLDNER: Would that be
21 typical for Aquarion to not have fire hydrants in
22 a particular subdivision or area?

23 MR. FOSSUM: Defer to Mr. McMorran on
24 what would be typical.

1 MR. McMORRAN: That determination is
2 actually made, excuse me, by the planning boards,
3 when the subdivision plans are proposed.

4 MR. ROY: Commissioner, if I may? This
5 is Steve Roy, from Wiggin Way Homeowners'. We
6 have fire protection, a pond and a fire
7 protection tank in the subdivision that was
8 approved at the time that the subdivision was
9 built. We're not asking or expecting that fire
10 hydrant/fire protection service be provided to
11 the subdivision. Just the continued operation of
12 the existing public water supply service to our
13 43 houses.

14 COMMISSIONER GOLDNER: Okay. Thank
15 you. Very helpful. Is that memorialized
16 somewhere?

17 And I'm just thinking about some of the
18 concerns voiced, where somebody would come back
19 in three or four or ten years and say "we want
20 fire hydrants supplied by the main line."

21 And, so, I'm just trying to understand
22 what the status would -- is that memorialized
23 somewhere or could somebody come in and ask for
24 something different in the future?

1 MR. ROY: It's in our subdivision
2 regulation that the -- and the covenants for the
3 subdivision, that fire is supplied by the pond
4 and the tank on the system. And that the only
5 purpose of the water supply is for potable use.

6 COMMISSIONER GOLDNER: Thank you. And
7 another question for anyone on the panel.

8 How does the Wiggin Way system perform
9 today? Water pressure, PPM levels, in terms of
10 arsenic, *etcetera*, relative to the rest of the
11 Aquarion system? Is it the same or is it
12 different?

13 MR. ROY: Mr. Commissioner, this is
14 Steven Roy again, from Wiggin Way Homeowners'
15 Association.

16 One of our issues going into 2016 and
17 2017 was the arsenic level in the wells. We were
18 starting to experience elevated arsenic levels.
19 As you know, the Drinking Water Standard was
20 reduced for arsenic, which was leading us to
21 consider adding treatment onto the system or to
22 remove the arsenic.

23 It was at that time that we also
24 started experiencing water failures in the three

1 wells and not enough supply, leading to several
2 episodes where we had to truck in a water tank to
3 fill up our atmospheric tanks, in order to just
4 maintain the supply.

5 So, we were experiencing arsenic.
6 We're a non-community public water supply. So,
7 we're subject to all of the Safe Drinking Water
8 Act and New Hampshire DES rules and regulations
9 regarding to safe operation and adequate supply
10 for water supplies, and basically we were
11 failing. And there was no other way to provide
12 water for our residents, because the wells would
13 just not supply the adequate supply. And we were
14 facing, at that time, arsenic treatment.

15 And, as you know, Drinking Water
16 regulations continue to change over time, and now
17 manganese is an issue and PFAS is an issue, and
18 who knows what the next chemical could be. And
19 we're just a group of, you know, residents, being
20 told that we have to operate a professionally,
21 you know, managed public water supply. And we
22 had great service out of Pennichuck, but it's
23 extremely difficult.

24 And the case before you today is

1 probably not going to be the last case you every
2 see about a small non-community public water
3 supply that's facing all these new regulations
4 that have to be addressed by professional public
5 water supply operators.

6 And the Seacoast area is in a bit of
7 trouble. And they're going to need a regional
8 solution to solve all the water supply issues
9 that are facing out there. And that's going to
10 mean there will be more petitions to join to
11 existing water supplies with these smaller
12 systems that just can't handle all the, you know,
13 new and evolving and current regulations that we
14 need to keep up on. And it's extremely difficult
15 for us. We try to do our best.

16 DES reviewed our situation. And, after
17 a deliberate consideration, decided that the best
18 alternative for us was just connect to the
19 Aquarion water system and be regular customers.
20 That's all that we're asking for. Is just our
21 little subdivision of 43 households just want to
22 be regular customers of Aquarion to be served by
23 an adequate public water supply.

24 COMMISSIONER GOLDNER: And I assume

1 that your water has been tested recently, and
2 that the supply from Aquarion meets all the DES
3 standards?

4 MR. ROY: Yes, it does.

5 COMMISSIONER GOLDNER: Okay. And your
6 water pressure, do you know how that compares to
7 the rest of the Aquarion system? Is it the same?
8 Or is it --

9 MR. ROY: It's the same. It's
10 regulated by the -- there's a pressure-reducing
11 valve that's in the connection there.

12 COMMISSIONER GOLDNER: Okay. Thank
13 you.

14 That's all the questions I have, Madam
15 Chair.

16 CHAIRWOMAN MARTIN: All right. Thank
17 you.

18 I just have a few, because most of mine
19 have been answered during the discussions today.

20 We heard about meters, and that those
21 would be paid for by Wiggin Way. We heard about
22 the bypass. And we heard about the taxes.

23 Is there anything else costwise or
24 infrastructurewise that needs to be done, in

1 order to make this a permanent connection?

2 (Mr. McMorran indicating in the
3 negative.)

4 MR. FOSSUM: I don't believe Aquarion
5 is aware of anything more that would be required.

6 CHAIRWOMAN MARTIN: Okay. We also
7 heard about a cost of service study being
8 cost-prohibitive from Energy. When the finding
9 of being the most cost-effective option
10 determination was made by DES, or at any point
11 through this process, has the cost of service
12 been looked at, short of a full cost of service
13 study? Or is there data available related to
14 that, regarding the cost to add service to Wiggin
15 Way?

16 MR. FOSSUM: I'm not certain of that.
17 I would look to Ms. Szabo from Aquarion, whether
18 she has any information on that?

19 MS. SZABO: Certainly. So, when we
20 talk about the cost of service for Wiggin Way,
21 obviously, not a, you know, a full-blown study,
22 but if we talk about the components that go into
23 a cost of service, one being the required return
24 on rate base. With this instance, there will be

1 no rate base for Wiggin Way, since the assets
2 will all be contributed. So, we'll have a zero
3 rate base value.

4 And, then, building on the other
5 components of cost of service, we looked at
6 operating expenses. And, so, we looked at a
7 couple of components. One being what our current
8 variable cost to produce a gallon of water is,
9 and looked at that in comparison to the
10 consumption that we see going through the Wiggin
11 Way metered consumption. And we also looked at
12 some other additional operating costs, in terms
13 of meter reading, some other standard, you know,
14 daily operational type costs that we incur across
15 our system. And, in doing so, those costs, on an
16 annual basis, approximate about \$2,300, well
17 below what those customers are currently paying
18 right now for the consumption that they currently
19 use.

20 CHAIRWOMAN MARTIN: Thank you. You
21 just touched on part of what I was going to ask.

22 The Asset Transfer Agreement refers to
23 "RSA 485:4, II", where it states that "any order
24 issued under this paragraph shall not delegate

1 any costs associated with a connection to the
2 person receiving the order from the department."
3 And you just mentioned "operational costs".

4 So, I was looking to understand
5 permitting, approval, legal costs, all of which
6 may all be included in your operational costs.
7 Are those being separately paid for as it relates
8 to all of this? Or can you give me an
9 understanding of how those types of costs
10 associated with this connection are being
11 addressed?

12 MS. SZABO: In terms of additional
13 costs for Aquarion, we haven't contemplated or
14 included permitting type costs in that. And our
15 legal representation is provided by our parent
16 company. So, there are no other external costs
17 that we've factored into the Asset Transfer
18 Agreement.

19 CHAIRWOMAN MARTIN: Okay. And we've
20 heard some about the condition today of the water
21 system itself, and I did see the representations
22 related to conditions in the Asset Transfer
23 Agreement.

24 Has any actual assessment been done on

1 that infrastructure? Or is there just a reliance
2 on that representation?

3 MR. FOSSUM: Mr. McMorran, do you have
4 any information on that?

5 MR. McMORRAN: We've inspected what we
6 can see above ground. But, obviously, we haven't
7 seen any of the actual pipe. But it's PVC that
8 has a fairly high rating. I don't personally
9 have any concerns about pressure or a higher
10 frequency of breaks or leaks that we see anywhere
11 else where we have that type of pipe. But we
12 know where all the curb valves are and the other
13 valves in the system, and the general extent and
14 location of the pipes.

15 CHAIRWOMAN MARTIN: Okay. Thank you.

16 There were mentioned some easements
17 that need to be acquired, related to the bypass
18 from lot owners. What's the status of those?

19 MR. REIMERS: Attorney Fossum, correct
20 me if I'm wrong, but I believe that we're -- that
21 that is on our list of things to take care of,
22 after we get approval for the franchise. We have
23 a list of a variety of housekeeping things.

24 CHAIRWOMAN MARTIN: Thank you.

1 MR. FOSSUM: And I would agree, yes.
2 That's following the franchise approval, that
3 would be one of the items to attend to.

4 CHAIRWOMAN MARTIN: I assume, though,
5 that you've started negotiations, and that is a
6 likelihood?

7 MR. FOSSUM: Yes.

8 MR. REIMERS: Oh, yes. We don't
9 anticipate any issues with regard to those
10 easements, or any of the remaining administrative
11 tasks that we have to do.

12 CHAIRWOMAN MARTIN: Okay. Thank you.

13 And I think that this has been answered
14 throughout the day today, but I just wanted to
15 check and confirm, whether there is any
16 anticipated change in demand? It sounds like
17 it's been in operation for several years. And,
18 so, safe to assume that the demand or the
19 necessary supply will stay the same, nothing
20 changes there?

21 MR. REIMERS: Yes. I believe that is
22 correct.

23 And, Mr. Roy, correct me if I'm wrong,
24 but I don't believe any additional homes can be

1 added in the subdivision, is that right?

2 MR. ROY: That's correct. This
3 Agreement is to serve 43 households, and that's
4 it. There's no addition to the system, nor can
5 the system handle the capacity of expansion at
6 all, just due to the size. You know, basically,
7 this is a 3-inch PVC pipe that services our
8 community, a solid PVC pipe. It doesn't have the
9 capacity to expand beyond the 43 households that
10 we have in our subdivision. And there's no
11 intent at all, nor is there any opportunity, to
12 expand the subdivision or the water system
13 anywhere else.

14 CHAIRWOMAN MARTIN: Okay. Thank you.
15 Those are all my questions.

16 Commissioner Goldner, anything left for
17 you?

18 COMMISSIONER GOLDNER: No follow-up.
19 Thank you.

20 CHAIRWOMAN MARTIN: All right. Well,
21 thank you, everyone.

22 Is there anything we need to address
23 before you go to the technical session?

24 *[No indication given.]*

1 CHAIRWOMAN MARTIN: All right. Seeing
2 nothing. Then, we are adjourned for the day.
3 Have a good rest of the day.

4 ***(Whereupon the prehearing conference***
5 ***was adjourned at 11:23 a.m., and a***
6 ***technical session was held***
7 ***thereafter.)***