

DW 06-094

AQUARION WATER COMPANY OF NEW HAMPSHIRE

**Petition for Approval of Corporate Acquisition
Pursuant to RSA 369:8, II and RSA 374:33**

Procedural Order

ORDER NO. 24,651

July 28, 2006

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A. by Steven V. Camerino, Esq. for Aquarion Water Company of New Hampshire and Macquarie Utilities, Inc.; Mark Gearrald, Esq. for Town of Hampton; Henry Fuller for North Hampton Water Commission; Office of Consumer Advocate by Rorie Hollenberg, Esq. on behalf of residential ratepayers; and Marcia A.B. Thunberg, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

This proceeding before the New Hampshire Public Utilities Commission (Commission) involves a petition filed jointly by Aquarion Water Company of New Hampshire (Aquarion) and Macquarie Utilities, Inc. (Macquarie) for approval pursuant to RSA 369:8, II and RSA 374:33 of the indirect acquisition of Aquarion by Macquarie. Aquarion is a New Hampshire public utility serving approximately 8,700 customers in Hampton, North Hampton and Rye.

The petitioners made their initial filing on June 22, 2006, and the Commission issued an order of notice on July 3, 2006, that scheduled a prehearing conference for July 14, 2006, and established July 11, 2006, as the deadline for intervention requests. Pursuant to RSA 363:28, the Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers on June 29, 2006. On July 10, 2006, the Commission received intervention petitions from the Town of Hampton and the North Hampton Water Commission.

The prehearing conference took place as scheduled. In the absence of objection, and consistent with RSA 541-A:32, I, the Commission granted the two pending intervention requests.

Following the prehearing conference, the parties and Commission Staff conducted a technical session to commence discovery and to confer on a procedural schedule to recommend to the Commission. On July 18, 2006, Aquarion and Macquarie filed a proposed procedural schedule, culminating with a hearing on September 20, 2006, as agreed to by the participants in the technical session (with the exception of the North Hampton Water Commission, which took no position on the scheduling proposal). Also on July 18, 2006, the North Hampton Water Commission submitted a letter requesting that the September 20 hearing be held in Hampton, as opposed to the Commission's offices in Concord. On July 21, 2006, attorneys for the Town of North Hampton filed a letter requesting that they be added to the service list for the purpose of receiving copies of "all papers, documents, filings, notices, and other documents" in the docket. By letter received on July 28, 2006, the attorneys clarified that, since the North Hampton Water Commission is a constituent part of the municipal corporation, they wished the Commission to consider the Water Commission's intervention as applicable to the entire municipal corporation, on whose behalf they appear. The Rye Beach Village District filed a request for intervenor status on July 24, 2006.

II. PROCEDURAL SCHEDULE

The proposed procedural schedule submitted following the technical session by the petitioners is as follows:

Rolling data requests to petitioners	through July 31, 2006
Responses by petitioners to data requests	August 10, 2006
Technical session/settlement conference	August 21, 2006, 9:00 a.m.
Testimony of Intervenors and Staff	September 8, 2006
Hearing	September 20, 2006

We have reviewed the proposed procedural schedule and note that, although it provides for a prompt review of the proposed corporate transaction, the schedule is inconsistent with certain procedural deadlines established by RSA 369:8, II. Specifically, paragraph (b) of the statute gives the Commission an initial 30-day period, which commenced on June 22, 2006, in which, after the opportunity for a hearing, to make a preliminary written determination that the proposed transaction will have an adverse effect on rates, terms, service or operation of the public utility in New Hampshire. The initial 30-day period is subject to a 30-day extension if invoked by the Commission. Should the Commission make such a preliminary written determination, paragraph (b) subjects the transaction to further review by the Commission under RSA 374:33 after an opportunity for the petitioners to revise their request for approval.

The proposed September 20, 2006 hearing date falls after the end of the initial review period, even assuming the extension by 30 days of the initial 30-day review period. It is our understanding, and we therefore determine, that by submitting such a proposed schedule to the Commission, on their own behalf as well as on behalf of other parties and Staff, the petitioners have waived their right under RSA 369:8, II that the transaction be deemed approved in the absence of a preliminary finding of adverse impacts within 60 days of the initial filing. Such a waiver is not without precedent. *See, e.g., Public Service Company of New Hampshire*, 85 NH PUC 125 (2000). Accordingly, we approve the proposed procedural schedule as consistent with the public interest.

N.H. Code Admin. Rules Puc 201.02 specifies that Commission hearings be conducted at the agency's offices in Concord, but provides that the Commission may convene one or more "public statement hearings" in the service territory of the affected utility if it would "assist the commission to ascertain the views of the utility's customers." We will treat the request of the

North Hampton Water Commission to conduct the September 20, 2006 hearing in Hampton as a request for a public statement hearing and we find that such an opportunity would assist us in ascertaining the views of Aquarion customers about the proposed transaction. Accordingly, we will conduct a public statement hearing in the Aquarion service territory on the evening of September 11, 2006, at a location to be announced..

III. OTHER MATTERS

We next address the correspondence received from the attorneys for the Town of North Hampton. Given that, as they point out, the North Hampton Water Commission is not an independent entity but, rather, a constituent part of the municipal corporation, we agree that it is appropriate to treat the municipal corporation as the intervenor and place its attorneys on the service list for the docket.

Finally, we address the request for intervenor status submitted by the Rye Beach Village District. It is our determination that the request be granted, as consistent with the standards set forth in RSA 541-A:32, I, provided that the Village District be subject to the procedural schedule already agreed to by the other parties in the proceeding. *See* RSA 541-A:32, I(c) (limiting interventions to situations in which “the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired” by the intervention).

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule outlined above is APPROVED to govern the remainder of the proceedings in this docket; and it is

FURTHER ORDERED, that the request of the Rye Beach Village District for intervenor status is GRANTED as conditioned herein.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of July, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary