

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 21-090**

**ABENAKI WATER COMPANY and AQUARION COMPANY**

**Petition for Approval of the Acquisition of  
Abenaki Water Company by Aquarion Company**

**Preliminary Determination Under RSA 369:8**

**O R D E R N O. 26,506**

**August 6, 2021**

In this order the Commission issues a preliminary written determination pursuant to RSA 369:8, II (b)(3) that the acquisition of Abenaki Water Company by Aquarion Company will have an adverse effect. As a result, the Commission invites the Joint Petitioners to amend their filing to address the Commission's concerns.

**I. PROCEDURAL HISTORY**

On April 30, 2021, Aquarion Company (Aquarion) and Abenaki Water Company (Abenaki) (together Joint Petitioners) filed a joint petition requesting approval of the acquisition of Abenaki by Aquarion. On May 10, 2021, the Joint Petitioners filed supplemental attachments to their Joint Petition. The Commission issued an Order of Notice, setting a prehearing conference on May 14, 2021, and extending the time period to make a preliminary determination of whether the proposed transaction will have adverse effect on rates, terms, service, or operation of the public utility, pursuant to RSA 369:8(II)(b)(4), by an additional 30 days.

The Office of Consumer Advocate (OCA) noted its participation by letter filed with the Commission on May 3, 2021. Numerous water customers of Abenaki in the Bow and Tioga Belmont water systems requested intervention (Customer Intervenors). Omni Mount Washington (Omni) and the Bretton Woods Homeowners Association (Bretton Woods) also requested

intervention. On May 10, 2021, the Joint Petitioners filed supplemental attachments to their Joint Petition. Following the prehearing conference, the Commission granted all interventions, determined that the 60-day deadline for a preliminary finding on adverse effect under RSA 369:8, II (b)(3) and (4) would begin at the earliest on May 10, 2021, and requested that the parties brief legal issues concerning the standard of review to be used under RSA 369:8. The Joint Petitioners and the OCA filed briefs and reply briefs on June 9, and June 16, 2021, respectively.

Evidentiary hearings were held on June 28 and 29, 2021. On July 1, 2021, the Joint Petitioners filed a request to extend the 60-day deadline for a preliminary determination, for 30 days. The OCA supported the extension request. On July 9, 2021, the Commission issued Order No. 26,497 granting the requested extension for 30 days, until August 8, 2021.

On July 15, 2021, the Joint Petitioners filed a letter with the Commission offering to withdraw the Abenaki rate case pending before the Commission and docketed as DW 20-112. According to the Joint Petitioners, the rate case withdrawal would be effective upon the Commission's issuance of a preliminary determination of no adverse effect on the rates, terms, service or operation of Abenaki, as a result of the proposed acquisition. *See* RSA 369:8, II. Also, on July 15, 2021, the OCA filed a letter indicating its agreement to support a Commission finding of no adverse effect of the proposed acquisition, contingent on Abenaki's withdrawal of its pending rate case, DW 20-112.

## **II. POSITIONS OF THE PARTIES**

### **A. Joint Petitioners**

On April 7, 2021, Abenaki's parent company, New England Service Company (NESC), and Aquarion entered into an Agreement and Plan of Merger by which Aquarion would acquire through a merger all of the issued and outstanding common stock of NESC, with NESC

becoming a wholly owned direct subsidiary of Aquarion (Acquisition). The Acquisition would result in Aquarion having ownership and control of NESC and its subsidiaries, including Abenaki, which would become an indirect wholly owned indirect subsidiary of Aquarion. Aquarion will have a different post Acquisition structure in New Hampshire than the other states; specifically, Aquarion Water Company – which is a subsidiary of Aquarion – would encompass four legal subsidiaries: AWC-CT, AWC-MA, AWC-NH, and Abenaki Water Company. AWC-NH and Abenaki Water Company would be separate legal entities in New Hampshire, while in Connecticut and Massachusetts, Abenaki will be combined into AWC-CT and AWC-MA respectively. The joint petition, claimed that the Acquisition would not have an adverse effect on rates, terms, service, or operation of Abenaki under RSA 369:8, and would be lawful, proper and in the public interest consistent with RSA 374:33. Further, according to the Joint Petitioners, the Acquisition would result in “no net harm” to Abenaki’s customers, and would be beneficial to Abenaki’s customers.

At hearing, the Joint Petitioners through their witnesses, Don Morrissey, Donald Vaughan, Robert Gallo, and Debra Szabo, claimed there would be no adverse impact as a result of the Acquisition, and argued that the Acquisition would benefit the customers of Abenaki going forward.

In their brief and reply brief the Joint Petitioners argued that the Commission is bound by the plain language of RSA 369:8 to apply a “no net harm” test to the record before it to reach a determination concerning the Acquisition.

In connection with its request to extend the 60-day timeline the Joint Petitioners noted that the extension would be beneficial because it would enable Aquarion to evaluate issues associated with Abenaki’s rate request in light of information gathered at the hearings, and to explore alternatives for resolution of this proceeding.

In their July 15, 2021, filing the Joint Petitioners indicated that they have determined it is in the best interest of all parties to remove Abenaki's rate request as an impediment to the Commission's preliminary determination on adverse impact under RSA 369:8, II by withdrawing it. Although they claimed Abenaki has an urgent need for rate relief, they believe customers are better served by allowing the proposed acquisition to move forward without the added consideration of Abenaki's pending rate request. Joint Petitioners argued that withdrawal of the rate case would enable the Commission to determine that there will be no adverse effects on rates, terms, service, or operations of Abenaki as a result of Aquarion becoming its new parent company.

In their status update letter on July 29, 2021, the Joint Petitioners further committed that, conditioned on a preliminary finding of no adverse impact, and closing on the Acquisition on or before December 31, 2021, they would delay any future rate case until 12 months after the Acquisition was completed. The rate case would be based on a test year with 12 months actual cost data – on a calendar year basis – under Aquarion ownership. If the Commission issues such determination, and the Acquisition is consummated after December 31, 2021, the Joint Petitioners committed to making a good faith effort to use a calendar test year in the future rate case filing. In any event, the future rate case filing would be based on 12 months of actual costs under Aquarion ownership and would not be filed until the completion of one year after the date of closing. In addition, although the rate case in Docket No. DW 20-112 did not include the Rosebrook system, this commitment would also apply to a future rate case for the Rosebrook system.

In their August 2, 2021, objection to Omni's motion for rehearing the Joint Petitioners urged the Commission to deny the motion. The Joint Petitioners argued that the Commission's order suspending the deadline to make a preliminary finding of no adverse effect under RSA

369:8 was not a final order, and thus not governed by RSA 363:17-b. The Joint Petitioners also asserted that Omni's arguments regarding the over-valuation of Abenaki's assets were beyond the scope of the Commission's review under RSA 369:8.

## **B. OCA**

At hearing the OCA opposed the acquisition, claiming that the pending Abenaki rate case with its proposed large rate increases, prevented the Commission from finding either no adverse impact, or net benefits, of the Acquisition.

In its briefs, the OCA argued that the Commission should apply both a no net harm and a net benefits tests to the Acquisition. The OCA posited that the Acquisition was not the sort of parent to parent transaction envisioned by RSA 369:8 and that the net benefits test under RSA 374:33 should be applied.

Thereafter, the OCA supported the Joint Petitioners' request to withdraw the Abenaki rate case in exchange for a Commission finding of no adverse impact under RSA 369:8. Contrary to its arguments in briefs and at hearing, in its letter the OCA acknowledged that such a finding of no adverse impact would "amount to a deemed approval of the proposed transaction pursuant to RSA 369:8, II." OCA Letter July 15, 2021.

The OCA explained that its prior opposition to the Acquisition was based solely on its concerns about the large increases proposed in the rate case. The OCA stated in its letter of support that Aquarion and its ultimate parent, Eversource, represent stronger and better stewards of the various water systems comprising Abenaki than the current owners. The OCA further stated that Aquarion has adequate managerial, financial, and technical capabilities and that both ratepayers and shareholders, will benefit from the Acquisition.

### **C. Customer Intervenors**

At hearing, the Customer Intervenors raised concerns about water quality and supply issues in both the Bow and the Tioga Belmont water systems. They also raised concerns about the magnitude of the rate increases proposed in the pending Abenaki rate case docketed as DW 20-112.

In their related filing, the Customer Intervenors agreed to the proposed withdrawal of the pending Abenaki rate case, but requested further conditions: (1) no rate case expenses from the withdrawn rate case be recovered from ratepayers; (2 and 3) all water quality remediation plans for the Bow and Tioga Belmont systems be carried out on schedule; (4) Aquarion consider combining Abenaki rate base with Aquarion's rate base; (5) the subsequent rate case for Abenaki be filed no sooner than one year after Aquarion takes full ownership of Abenaki to allow for a complete year of test data under the new ownership.

In response to the Joint Petitioners' status update letter, the Customer Intervenors acknowledged that the commitments made by the Joint Petitioners' satisfied their fifth request, but not the other four.

### **D. Omni**

At hearing, Omni expressed concerns about the lack of progress on developing and implementing a solution to the high pressure issues on the Rosebrook water system.

In its filing on July 26, 2021, Omni (1) sought rehearing, (2) objected to the settlement, and (3) moved for a determination of adverse effect. Omni sought rehearing of Order No. 26,497 (July 9, 2021), pursuant to RSA 541:3, on the ground that the Order is unlawful because the Commission lacks authority to grant an extension. Omni argued that RSA 363:17-b prevented the Commission from relying on RSA 541-A:29 in granting the extension. Although Omni argued the Order was null and void as a result, Omni also argued that the Joint Petitioners'

request for an extension should operate as a waiver of the statutory time periods and therefore the Commission has until August 9, 2021 to issue an order. Omni Motion, July 16, 2021, pages 4-5. In addition, Omni objected to the agreement between the Joint Petitioners and the OCA because Omni claimed it does not serve the public interest as required by Puc 203.20. Omni also asked the Commission to determine, in accordance with RSA 369:8, II, that the acquisition as proposed will have an adverse effect on rates, terms, services, or operations.

#### **E. Bretton Woods Property Owners**

The Bretton Woods property owners argued at hearing that the Abenaki water system assets should be acquired by Aquarion at a discounted price due to the inadequate performance of those assets in the Rosebrook and other water systems. They further argued that the rate increases sought in the pending Abenaki rate case were about a \$200,000 increase in annual revenues, but should really be viewed as contributing to a multi-million dollar increase to the purchase price. The Bretton Woods property owners argued this increased price is due to the discounted cash flow analysis that a purchaser would typically perform prior to offering a purchase price. Finally, the property owners argued that they had heard no firm commitments from Aquarion concerning timing and cost of correcting any of the serious system deficiencies in New Hampshire.

#### **F. Department of Energy**

At hearing the Department of Energy (Energy) argued that the pending Abenaki rate case distinguished the Acquisition from other proposed transactions the Commission has reviewed under RSA 369:8. Energy argued that, given the pending Abenaki rate case, the Commission could not determine what future rates would be. Further, given the lack of detail surrounding the transition, Energy asserted the Commission could not determine what the future operation of Abenaki would look like. Nonetheless, Energy pointed out Aquarion brought some expertise and

financial strength to the table and Energy supported the Acquisition based on a public interest or public good test.

Energy also supported the Commission finding no adverse impact based on the Joint Petitioners' offer to withdraw the Abenaki rate case and to delay a future rate case for all of Abenaki's New Hampshire water systems.

### **III. COMMISSION ANALYSIS**

#### **A. Motion for Rehearing**

As an initial matter, Omni's request for rehearing of Commission Order No. 26,497 (July 9, 2021) because the Commission lacks authority to grant an extension is denied. As detailed in Omni's filing and noted by the Joint Petitioners, despite Omni's argument the Commission acted without authority, Omni agrees that the Commission has until at least August 6, 2021 to act. *See* Omni Motion, July 16, 2021, pages 4-5 and Joint Petitioner Response, August 2, 2021, at page 4. Accordingly, there is no current controversy that rehearing the Commission's grant of an extension seeks to address. We agree with the Joint Petitioners that rehearing of the Order would serve no practical purpose given this lack of controversy. We therefore deny the motion as moot.

#### **B. Existing Concerns Regarding Abenaki Rates, Finances and Service**

The testimony at hearing described the significant financial challenges the Abenaki water companies face. Aquarion's witness observed, "[b]ut certainly based upon what I've seen of the Abenaki operations and the financial performance, there is dire, dire need for rate relief for that business." Afternoon Hearing Transcript July 28, 2021, at page 54 lines 11-14. And further, "I think the challenge for us all, really, and I mean 'the collective all,' everybody that's a party to this conversation right now, is that you're looking at a business, Abenaki, that is effectively a basket case. It is on the borderline non-viable, right, a regulated utility that is losing money. There is a need for rate relief." Afternoon Transcript July 28, 2021, at page 56, lines 15-23.

The Aquarion witness observed, “I think there's just so much going on in Abenaki right now. You know, addressing pressure issues up in -- up in Bretton Woods, or arsenic issues, there's [radium] issues. All of these things are going to add a level of complexity, a level of capital investment, and cost of service.” Morning Hearing, July 28, 2012, page 78 lines 6-11. And further, “[t]hese operational challenges, will require some additional capital investment.” July 28, 2021 Afternoon Hearing Transcript at p. 43 lines 1-5.

At hearing we also heard extensive discussion of the proposed rate increases, 200 percent on a consolidated basis, for the Abenaki water systems included in the pending rate case. In addition, Aquarion repeatedly acknowledged the need for additional capital improvements in the New Hampshire Abenaki water systems. These required capital improvements will drive further rate increases to meet operational and service quality issues. Notwithstanding Abenaki’s need for immediate rate relief based on its current operating losses, and need for future rate increases based on its capital improvement requirements, rate increases for customers of a regulated utility are limited by affordability as acknowledged by Aquarion at hearing. *See* Afternoon Hearing Transcript, July 28, 2021, at page 47 lines 12-14. It is within the context of the existing concerns regarding Abenaki’s rates, finances, and service that the Commission must consider this Acquisition.

### **C. Standard of Review Under RSA 369:8**

The plain language of RSA 369:8, II (b) requires the Commission to review detailed written representations of corporate mergers initially under the standard of “no adverse effect on rates, terms, service or operation of the public utility within the state.” The Commission only applies the standards applicable under other statutes, if the Commission first determines that there is an adverse effect under RSA 369:8, II (b) (5). Prior to making a determination of adverse effect, the Commission must first make a preliminary determination of adverse effect and permit

an amended filing to address the Commission's preliminary determination. *See* RSA 369:8, II (b)(3). As a result, at this time, the Commission reviews the record presented in order to render a preliminary determination as to whether the proposed Acquisition will have an adverse effect on the rates, terms, service, or operation of the Abenaki water companies located in New Hampshire. The Commission's preliminary determination is based on the Joint Petition and the testimony and evidence presented at hearings held on July 28 and 29, 2021.

#### **D. Effect on Rates**

We preliminarily find that the Acquisition, as currently proposed, will have an adverse effect on Abenaki's rates and would unfairly burden the rate payers. The evidence presented at hearing made clear that Abenaki's assets were not in an acceptable condition in the aggregate. Given this record, we conclude that the current state of the assets are below standard and in disrepair. As noted above, Abenaki will be combined into the Aquarion Water Company entities in Connecticut and Massachusetts. But in New Hampshire, Abenaki and Aquarion Water Company will remain separate entities. This proposed post-acquisition structure in New Hampshire, as compared to Connecticut and Massachusetts, appears to be a reflection of the asset impairment and liability issues.

We find the Acquisition will have an adverse effect on rates because the proposed carry forward of existing Abenaki rate base for purposes of the transaction does not take into account the impaired state of the rate base assets. Any resulting recovery of rates based upon the pre-acquisition book value of those assets as proposed in this Acquisition will have an adverse effect as the utility's rates would unfairly burden rate payers. Thus, we find, as a preliminary matter pursuant to RSA 369:8, II (b), this Acquisition will have an adverse effect on Abenaki rates.

**E. Conclusion**

Notwithstanding our preliminary finding of an adverse effect on rates, we recognize there are other benefits offered by Aquarion as the acquiring utility. Aquarion, through its current ownership of New Hampshire utilities, has demonstrated its managerial, financial, and technical capabilities to operate a utility in New Hampshire. Aquarion's superior financial resources will be useful to the Abenaki water companies. Further, Aquarion's willingness to defer a rate case until a full test year of data under Aquarion's ownership and operation eliminates other potential adverse impacts presented by the pending Abenaki rate case.

We also share the concerns of the intervenors about the water supply and water quality issues. The water pressure issues in the Rosebrook system and the arsenic and other water quality issues in the Abenaki systems raise safety as well as service quality concerns and must be remedied immediately.

However, the Commission wishes to be clear that memorializing Abenaki assets appropriately in the acquisition for purposes of rate recovery is at the core of the finding and must be addressed before the acquisition can be approved.

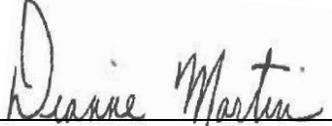
We encourage the Joint Petitioners to amend their detailed statement in order to address the adverse effect on rates.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the Commission finds as a preliminary matter pursuant to RSA 369:8, that the proposed Acquisition will have an adverse effect on the rates of Abenaki in New Hampshire, and it is;

**FURTHER ORDERED**, that Omni's request for rehearing of the Commission's Order No. 26,497 is denied as moot.

By order of the Public Utilities Commission of New Hampshire this sixth day of August,  
2021.

  
\_\_\_\_\_  
Dianne Martin  
Chairwoman

  
\_\_\_\_\_  
Daniel C. Goldner  
Commissioner

## Service List - Docket Related

Docket# : 21-090

Printed: 8/6/2021

Email Addresses

---

ClerksOffice@puc.nh.gov  
cristy.bresson@ffic.com  
slburgess2@comcast.net  
pradip.chattopadhyay@oca.nh.gov  
jessica.chiavara@eversource.com  
jcook@rocketmail.com  
jcranmore@cfmlawfirm.com  
robyn.j.descoteau@energy.nh.gov  
jdibella@cfmlawfirm.com  
matthew.fossum@eversource.com  
thomas.getz@mclane.com  
donald.kreis@oca.nh.gov  
NLaChance@NewEnglandServiceCompany.com  
jayson.p.laflamme@energy.nh.gov  
anthony.j.leone@energy.nh.gov  
kevin.m.monahan@comcast.net  
dmorrissey@aquarionwater.com  
pmueller@comcast.net  
amanda.o.noonan@energy.nh.gov  
ocalitigation@oca.nh.gov  
fr8man\_1@yahoo.com  
jralston@keeganwerlin.com  
F.Ross@puc.nh.gov  
jspeck@cokenortheast.com  
dgstap@comcast.net  
dszabo@aquarionwater.com  
christopher.r.tuomala@energy.nh.gov  
dvaughan@newenglandservicecompany.com  
dvenora@keeganwerlin.com  
eric.wind@puc.nh.gov  
pokidw@myfairpoint.net