

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 21-093**

**AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.**

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

**Order on Motion for Clarification**

**ORDER NO. 26,610**

**April 14, 2022**

On March 4, 2022, the Commission issued Order No. 26,590 approving the petition of Aquarion Water Company of New Hampshire, Inc. (Aquarion) to: 1) expand its existing franchise in North Hampton and Hampton to serve the Wiggin Way and Winterberry Lane subdivisions in Stratham; 2) acquire the existing water system assets owned by the Wiggin Way Homeowners' Association (Wiggin Way); and 3) apply Aquarion's consolidated tariff rates to customers in the new franchise area. On April 1, 2022, the NH Department of Energy (Energy) filed a motion for clarification of that order. In this order, we address that motion.

**I. MOTION FOR CLARIFICATION**

In its motion, Energy states that it does not contest the substantive decisions that the Commission made in Order No. 26,590. Rather, Energy requests clarification regarding the basis for approval of the asset transfer agreement (ATA) between Wiggin Way and Aquarion. Energy presents two issues for clarification on this point: (1) the applicability of RSA 374:30 to the Commission's approval of the ATA; and (2) the authority of the NH Department of Environmental Services (NHDES) to direct the Commission to approve the ATA.

Energy contends that RSA 374:30 does not apply to the ATA because Wiggin Way is a private water system, not a public utility, and that NHDES does not have the statutory authority to direct the Commission to approve the ATA. Accordingly, Energy seeks clarification of the Commission's "approval of the ATA pursuant to RSA 363:28 [sic], RSA 363:21 [sic], and RSA 541:3." Within the context of the motion, we will assume that Energy intended to refer to RSA 365:21, pertaining to re-hearings and appeals, and RSA 365:28, pertaining to the altering of orders, rather than to RSA 363:21 (pertaining to the compensation of special commissioners), or RSA 363:28 (pertaining to the Office of the Consumer Advocate).

## **II. COMMISSION ANALYSIS**

In its motion, Energy seeks clarification of Order No. 26,590 with respect to the legal authority underlying the Commission's approval of Aquarion's franchise expansion and acquisition of the Wiggin Way system assets. Specifically, Energy argues: (1) that RSA 374:30 does not apply to the Wiggin Way water system, which is a privately owned system, and therefore cannot be the basis for approval of the ATA; and (2) that the order issued by NHDES on March 29, 2017, Administrative Order No. 17-006 WD (NHDES Order), does not contain a provision mandating Commission approval and, further, that NHDES does not have the statutory authority to direct the Commission to approve the ATA. We agree on both points but find that Energy appears to have misconstrued the decision in Order No. 26,590 under the applicable statutes. Accordingly, we clarify as follows.

### **A. Transfer of Wiggin Way Water System Assets**

Energy is correct that RSA 374:30, which permits any *public utility* to transfer any part of its works or system upon Commission approval, does not apply to Wiggin Way (emphasis added). More specifically, the Wiggin Way Homeowners Association is

not considered a public utility under RSA 362:4, VII, and therefore is not subject to the approval requirements of RSA 374:30. We clarify, however, that the reference to RSA 374:30 was made by Aquarion in its petition. The Commission did not base its decision on RSA 374:30, and merely noted Aquarion's reference for the record in Order No. 26,590.

The Commission's approval of Aquarion's request for franchise expansion and the concomitant transfer of Wiggin Way's system assets was based, in part, on a finding that the transfer to Aquarion – and, thereby, Aquarion's acquisition - of the existing Wiggin Way infrastructure was “just and reasonable and in the public interest.” Order No. 26,590 at 7 (under *III.B. Acquisition of Existing Infrastructure Assets*). To provide further clarity, we note that the cited standards apply respectively to the general duty of public utilities to provide service and to the extension and exercise of franchise rights, including any applicable terms and conditions. *See, e.g.*, RSA 374:1 (“just and reasonable”) and RSA 374:26 (“in the public interest”). In contrast, the standard under RSA 374:30 is “for the public good,” applicable, as Energy noted, to the transfer by a public utility of its “works, or system.”

#### **B. NHDES Administrative Order No. 17-006 WD (March 29, 2017)**

Energy is correct in its statements that: (1) the NHDES order “does not contain a provision mandating Commission approval” of the acquisition by Aquarion of Wiggin Way's assets; and (2) that NHDES itself “does not have the statutory authority to direct the Commission to approve the ATA.” In response to Energy's request, we clarify as follows.

##### **1. NHDES Order and Commission Approval**

Again, for clarification purposes, we agree with Energy that the NHDES order “does not contain a provision mandating Commission approval” of Aquarion's

acquisition of Wiggin Way's assets. However, the NHDES order does include a requirement, applicable to Aquarion in collaboration with Wiggin Way, to seek Commission approval for a franchise expansion into Stratham and a permanent interconnection to the Wiggin Way system. *See, e.g.*, NHDES Order at ¶¶ E.3 and E.4. It was pursuant to that mandate that Aquarion filed its petition for franchise expansion to the Commission. *See* Aquarion Petition at 1–2, filed in Docket DW 21-093 on November 11, 2020.

Thus, while Energy reads the NHDES Order as not “mandating Commission approval,” we clarify that our reading of the same order is that NHDES directed Aquarion, in collaboration with Wiggin Way, to seek authority from the Commission to expand its franchise, which Aquarion proceeded to do. We note that Aquarion acknowledged in its Petition that Wiggin Way is not a public utility but stated that Aquarion nonetheless was required to seek Commission approval to effect the transfer of assets from Wiggin Way pursuant to the NHDES Order. Petition at 4, ¶13.

Accordingly, the Commission found Aquarion's acquisition of the Wiggin Way system assets through a mutual transfer agreement to be just and reasonable and in the public interest.

## **2. NHDES Authority**

In support of its argument that NHDES “does not have the statutory authority to direct the Commission to approve the ATA,” Energy states that the NHDES Order “does not contain a provision mandating Commission approval.” We reiterate the clarification provided above to agree with Energy that NHDES cannot direct the Commission to approve the ATA. To the extent that Order No. 26,590 is unclear on this point, the Commission reiterates that it approved the transfer agreement between Aquarion and Wiggin Way as just and reasonable and in the public interest for the

reasons stated in Order No. 26,590 and reiterated above in response to Energy's request.

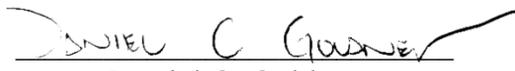
Based on the above, the Commission finds no reason to alter, amend, suspend, set aside, or otherwise modify Order No. 26,590 pursuant to RSA 365:28.

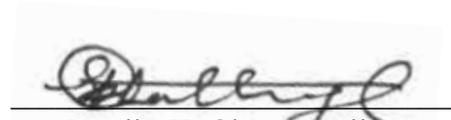
**Based upon the foregoing, it is hereby**

**ORDERED**, that Energy's Motion for Clarification is hereby **GRANTED**, as discussed and clarified above; and it is

**FURTHER ORDERED**, that Energy's request for rehearing pursuant to RSA 541:3 and RSA 365:21 is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 2022.

  
Daniel C. Goldner  
Chairman

  
Pradip K. Chattopadhyay  
Commissioner

# Service List - Docket Related

***Docket# : 21-093***

***Printed: 4/14/2022***

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