

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 06- _____

Re: Aquarion Water Company of New Hampshire

**Verified Petition for Approval of the Acquisition of Aquarion Company
by Macquarie Utilities Inc.**

Aquarion Water Company of New Hampshire (“Aquarion-NH”) and Macquarie Utilities, Inc. (“Macquarie” or “MUI”) (together, the “Joint Petitioners”) hereby file this petition requesting that the New Hampshire Public Utilities Commission (the “Commission”), pursuant to the provisions of RSA 369:8,II and RSA 374:33, approve the indirect acquisition of Aquarion-NH by MUI. The proposed acquisition will be accomplished through the sale by Kelda Group Inc. of all of the outstanding shares of the common stock of Aquarion Company, the parent of Aquarion Water Company which in turn is the parent of Aquarion-NH, to Macquarie Utilities Inc. This transaction will result in “no net harm”, and in fact will be beneficial to the customers of Aquarion-NH, and therefore, the proposed transactions meet the public interest standard embodied in RSA 369:8,II and RSA 374:33. In support thereof, the Joint Petitioners state the following:

The Parties

1. Aquarion-NH is a New Hampshire corporation and a public utility as defined in RSA 362:2, with a principal place of business in Hampton, New Hampshire. Aquarion-NH serves approximately 8,700 customers in the Towns of Hampton, North Hampton, and Rye, New Hampshire.

2. Aquarion Company (“Aquarion”) is a Connecticut corporation with a principal place of business in Bridgeport, Connecticut. Aquarion is a holding company that

owns 100 percent of the common stock of Aquarion Water Company who owns 100% of the common stock of Aquarion-NH, as well as the stock of water utilities in other jurisdictions. Aquarion is owned by Kelda Group, Inc., which is a wholly owned subsidiary of Kelda Group plc., a public limited company organized under the laws of England and Wales. Neither Aquarion, Kelda Group, Inc. nor Kelda Group plc are public utilities as defined by RSA 362:2.

3. Macquarie Utilities Inc. is a Delaware corporation and a member of the Macquarie group, which is comprised of Macquarie Bank Limited and its subsidiaries, funds and affiliates. MUI is controlled by two investment entities, Macquarie Infrastructure Partners (“MIP”) and Macquarie Utilities, LP (“MULP”), which will provide the equity for the transaction. MIP, an infrastructure fund managed out of Macquarie U.S.A.’s New York offices, has raised an initial \$669 million¹ and is in the process of raising significant additional funds. The Aquarion transaction will be MIP’s first investment, to which it will contribute approximately \$165 million of equity. MULP will contribute approximately \$135 million of equity to the Aquarion transaction. MUI, pursuant to shareholder agreements with MIP and MULP², will be controlled by Macquarie managed entities.

4. The Macquarie group has significant experience managing, operating, and investing in a diversified group of infrastructure businesses, including water companies, natural gas companies, and electricity transmission companies. The Macquarie group is one of the world’s largest global investors and managers of infrastructure assets with a record of proven service delivery and over \$24 billion of infrastructure and infrastructure-like equity

¹ \$110 million is pending MIP’s first Employee Retirement Income Security Act compliant Venture Capital Operating Company Investment.

² Once finalized, copies of the shareholder agreements will be filed with the Commission.

currently under its management. Through its investments, the Macquarie group is responsible for servicing customers in the following sectors around the world:

Gas distribution	3.8 million households
Water	1.9 million households
Electricity distribution	550,000 households
Electricity transmission	Approximately 3 million people
Airports	110 million passengers per year
Toll Roads	Approximately 2.4 million cars per day
Rail	2.5 million people per year

5. In North America, the Macquarie group's infrastructure asset portfolio includes investments in Cardinal Power, Thermal Chicago (District Energy), The Gas Company, Altalink, the Detroit-Windsor tunnel, Chicago Skyway, Dulles Greenway, Icon Parking, Indiana Toll Road³, the Sea-to-Sky Highway Improvement Project and South Bay Expressway. In addition, the Macquarie group's global portfolio includes significant water investments, such as South East Water in the United Kingdom and Prospect Water in Australia. Together these two companies provide water for over 1.9 million households.

The Transaction

6. On February 24, 2006, Kelda and MUI entered into a stock purchase agreement for the sale of Aquarion Company ("SPA"). A copy of the SPA is attached as Exhibit 1 to this Petition. Pursuant to the SPA, Kelda will sell to Macquarie all the issued

³ Subject to financing and customary closing arrangements, including regulatory approvals.

and outstanding shares of common stock of Aquarion (the "Sale"). At the completion of the Sale, Aquarion will be wholly owned by entities that are managed and/or controlled by the Macquarie group. A copy of the organizational structure of Aquarion prior to the Sale is attached as Exhibit 2, while a post-Sale organizational chart is attached as Exhibit 3. As demonstrated by Exhibit 3, Aquarion-NH will continue, unchanged, as a subsidiary wholly owned by Aquarion, with no change to its organizational structure post-Sale. The only change that will occur will be the change in control of Aquarion from Kelda to MUI.

7. Pursuant to the SPA, Aquarion's stockholders will vote on the approval of the stock purchase agreement with MUI. The proposed transaction is also subject to the waiting period applicable to the transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 having been terminated or expired⁴, and regulatory approvals from the New York Public Service Commission and the Connecticut Department of Public Utility Control⁵. Aquarion-NH and MUI seek approval of this transaction to become effective no later than the fourth quarter of 2006.

The Standard for Approval in New Hampshire

8. In New England Electric System, DE 99-035, Order No. 23,308 (1999) ("New England Electric"), the Commission stated that the mandate in RSA 369:8, which requires that acquisitions will "not adversely affect the rates, terms, service, or operation of the public utility within the state" embodies the same standard reflected in RSA 374:33, which authorizes the Commission to approve acquisitions that are "lawful, proper and in the public

⁴ It is expected that the Hart-Scott-Rodino Act filing will be submitted to the Federal Trade Commission and the Department of Justice on or around June 23, 2006. The waiting period will therefore expire 30 days from the date of that filing, unless previously extended or terminated early.

⁵ In addition to Aquarion-NH, Aquarion Company owns Aquarion Water Company of New York, Aquarion Water Company of Sea Cliff, and Aquarion Water Company of Connecticut.

interest.” New England Electric, slip op. at 16. Thus, proposed acquisitions must meet a “no net harm” test in order to be approved by the Commission. Id. The Commission stated that, in applying the no net harm test, it must “assess the benefits and risks of the proposed merger and determine what the overall effect on the public interest will be, giving the transaction . . . approval if the effect is at worst neutral from the public interest perspective.” Id.

Accordingly, the Commission’s standard will be met where an applicant for approval of an acquisition demonstrates that customers would be no worse off with the acquisition than without the acquisition. Pursuant to the Commission’s findings in New England Electric, the Joint Petitioners file herewith a proposal that meets and exceeds the Commission’s no net harm standard, and thus seeks its approval.

The Effect of the Sale on Aquarion-NH and its Customers

9. The Sale will result in no net harm to Aquarion-NH’s customers. Aquarion-NH’s management structure will remain in place and as a result, will remain aware of and responsive to local issues and will maintain the high quality of service currently provided to customers. The pre and post-Sale organization structure of Aquarion-NH is reflected on Exhibit 4. Importantly, the Sale will not result in any change in rates or other terms of service for Aquarion-NH’s customers. In short, on a day-to-day basis, Aquarion-NH’s customers will continue to interact with the same staff of Aquarion-NH that it does today, and will continue to receive utility service on the same terms and conditions as provided by Aquarion-NH when it was controlled by Kelda.

10. The Macquarie group, which is comprised of Macquarie Bank and its worldwide subsidiaries, funds and affiliates, provides specialist investment advisory and financial services, including fund and investment management in select markets around the

world, with over 8,200 staff in 24 countries. Macquarie Bank has a Standard & Poors credit rating of A and a Moody's credit rating of A2 (long-term).

11. The Macquarie group is a global leader in the infrastructure sector, with recognized strength in both infrastructure funds management and infrastructure advisory services. The funds management division of the Macquarie group, IB Funds, manages \$24 billion global equity investment portfolio, which includes investments in over 90 assets in 20 countries, including the United States, Canada, Australia, South Korea, the United Kingdom, Germany, Sweden, Belgium, Denmark, Portugal and Italy.

12. Access to capital markets is one of the key factors of successful infrastructure management. The Macquarie group's infrastructure advisory business will play an important role in identifying potential opportunities to achieve a more efficient capital structure, through:

- Arranging additional debt facilities to enable further investment in existing infrastructure;
- Arranging additional financing such that Aquarion may grow via acquisitions; and
- Refinancing existing debt.

13. Given the Macquarie group's significant experience owning, managing and investing in infrastructure, including distribution utilities, MUI brings to the transaction the requisite technical, financial, and managerial competence. The Macquarie group employs former regulators and utility executives who will be available to consult with and oversee operation of Aquarion-NH through Macquarie group's office in New York City.

14. Aquarion-NH's customers will receive the benefit of an investor who is attracted to long-term stable returns and is willing to invest the capital into the systems that it

owns, combined with a locally-based management team that has an established record of providing strong customer service. Specifically, Aquarion-NH's customers will benefit from MUI's ability to fund needed capital additions to meet ever increasing federal and state standards governing drinking water and to maintain and improve customer service through access to internal and external sources of capital. In sum, MUI has the experience, the investment philosophy and the access to capital to be an effective, long-term manager of Aquarion-NH's assets.

15. In addition, the Sale will not have an adverse effect on rates, terms, service or operation of Aquarion-NH for at least the following reasons:

- A. The corporate structure of Aquarion-NH will not be affected by the Sale. In addition, the tariffs, rates and regulations of Aquarion-NH will not change or be amended by the Sale.
- B. The assets, including rate base, of Aquarion-NH will not be altered by the Sale.⁶ In particular, MUI is not proposing to record an acquisition premium on the books of account of Aquarion-NH as a result of the Sale.
- C. Aquarion-NH will continue to be managed locally.
- D. The Sale will provide Aquarion-NH's customers with the benefit of the expertise and resources of MUI, including access to capital.

16. MUI's indirect acquisition of Aquarion-NH will not have an adverse impact on the rates, terms, service and operations of Aquarion-NH and through a shared commitment and support will enable Aquarion-NH to improve its already excellent operations and service. Therefore, MUI's acquisition of Aquarion-NH clearly will result in no net harm to Aquarion-NH's customers. For these reasons, Aquarion-NH and MUI request

⁶ As described later in the Petition, the Joint Petitioners are requesting that a regulatory asset be established to address certain post-retirement benefits. This will not have an impact on rates.

that the Commission approve the Sale to be effective no later than the end of the fourth quarter of 2006.

Pension and Post-Retirement Obligations

17. Aquarion currently calculates its pension and post-retirement benefit (“OPEB”) costs pursuant to the requirements of SFAS No. 87, *Employee Accounting for Pensions*, and SFAS No. 106, *Employers’ Accounting for Post-Retirement Benefits Other Than Pensions*, respectively. This method of calculating pension and OPEB expense is also recognized for rate-making purposes. As such, all prior service costs and gains and losses are amortized through expense over time and recognized in future rates.

18. According to generally accepted accounting principals (“GAAP”), this acquisition must be accounted for pursuant to the provisions of SFAS No. 141, *Business Combinations*, and requires the fair value of the assets and liabilities associated with the pension and OPEB benefit obligations be reflected in Aquarion-NH’s financial statements at acquisition. All previously unrecognized gains and losses, prior service costs and transition obligations must be recognized currently. Because Aquarion-NH is subject to the provisions of SFAS No. 71, *Accounting for the Effects of Certain Types of Regulation*, and will collect these amounts in its rate-making prospectively, it proposes to record a corresponding regulatory asset/liability equal to the amount necessary to adjust its financials to reflect the fair value required by the standards.

19. It should be noted that this accounting is intended to comply with the provisions of generally accepted accounting principles, but will not impact rate-making or the level of pension or OPEB expense recorded prospectively. As the pension and OPEB costs reflect the amortization of unrecognized costs prospectively (as it has historically

done), Aquarion-NH will reduce the asset/liability recorded in purchase accounting along with a corresponding amount of the regulatory asset/liability, with no net impact on Aquarion-NH's results of operations. There is no required adjustment in ratemaking to reflect any of this accounting on the costs to be recovered or amounts on which Aquarion-NH has requested a return.

20. The exact amount of pension and OPEB asset/liability with the offsetting regulatory asset/liability will be determined as of the closing date of the Sale. If the calculation was performed at December 31, 2005, it would have resulted in a pension regulatory liability of approximately \$61,000 and an OPEB regulatory asset of approximately \$587,000. For these reasons, Aquarion-NH requests that the Commission authorize it to record a corresponding regulatory asset/liability equal to the amount necessary to adjust its financials to reflect the fair value of its pension and post-required benefits as required by applicable accounting standards.

WHEREFORE, the Joint Petitioners respectfully request that the Commission:

- a. Determine that the proposed indirect acquisition of Aquarion-NH by MUI, which will be accomplished through the acquisition of Aquarion Company by MUI, will result in "no net harm" to the customers of Aquarion-NH;
- b. Approve the above-described transactions as filed in accordance with RSA 369:8,II(b)(2), or, alternatively, RSA 374:33;
- c. Issue an order authorizing Aquarion-NH to record a corresponding regulatory asset/liability equal to the amount necessary to adjust its financials to reflect the fair value of its pension and post-required benefits as required by applicable accounting standards; and

- d. Issue such other and further orders as may be just and reasonable and consistent with the public interest.

Respectfully submitted,

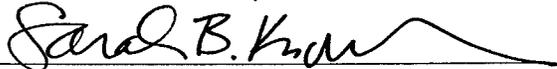
JOINT PETITIONERS:

AQUARION WATER COMPANY OF NEW HAMPSHIRE
MACQUARIE UTILITIES INC.

By Their Attorneys,

McLANE, GRAF, RAULERSON &
MIDDLETON, P.A.

Date: June 22, 2006

By: 

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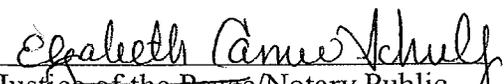
I, Charles V. Firlotte, President and Chief Executive Office, Aquarion Company, being first duly sworn, hereby depose and say that I have read the foregoing Verified Petition, and the facts alleged therein are true to the best of my knowledge and belief.

Dated:


Charles V. Firlotte

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

Sworn to and subscribed before me this 19th day of June, 2006.

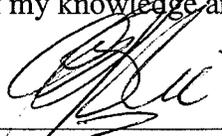

~~Justice of the Peace~~/Notary Public

My Commission Expires:

ELIZABETH CAMERINO-SCHULTZ
NOTARY PUBLIC
My Commission Expires February 28, 2007

I, Christopher Leslie, Chief Executive Officer, Macquarie Infrastructure Partners Inc., being first duly sworn, hereby depose and say that I have read the foregoing Verified Petition, and the facts alleged therein are true to the best of my knowledge and belief.

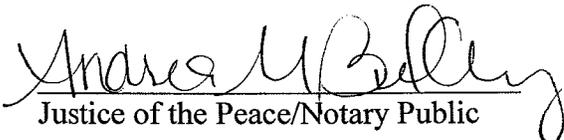
Dated:



Christopher J. Leslie

STATE OF MISSOURI
COUNTY OF COLE

Sworn to and subscribed before me this 16th day of June, 2006.



Justice of the Peace/Notary Public

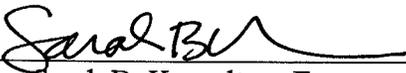
My Commission Expires:

ANDREA M. BINKLEY
Notary Public - State of Missouri
County of Cole
My Commission Expires Feb. 17, 2007

Certificate of Service

I hereby certify that a copy of this Petition has this day been sent by electronic mail to F. Anne Ross, Esq.

Dated: June 22, 2006



Sarah B. Knowlton, Esq.