

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-062

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

Petition to Charge Seasonal Rates for Emergency Interconnection

**Order Deferring Decision on Intervention Requests
and Approving Seasonal Rates**

ORDER NO. 26,016

May 10, 2017

This order authorizes Aquarion Water Company of New Hampshire, Inc., to provide water to the system owned by the Wiggin Way Home Owners Association on a temporary, emergency basis at Aquarion's seasonal rates.

BACKGROUND AND PROCEDURAL HISTORY

Aquarion Water Company of New Hampshire, Inc. (Aquarion), is a regulated water utility that provides service to its customers in Hampton, North Hampton, and Rye. The Wiggin Way Home Owners Association (Wiggin Way) owns, operates, and maintains its own water distribution system for the purpose of providing water to approximately 45 homes and more than 100 individuals in the Wiggin Farm and Winterberry subdivisions in Stratham, immediately adjacent to Aquarion's franchise service area.¹

On March 29, 2017, the New Hampshire Department of Environmental Services (DES) issued Administrative Order No. 17-006 WD (the DES Order). DES found that Wiggin Way did not have enough source capacity for its system, and that the water produced exceeds the arsenic standards established under its rules. Accordingly, pursuant to its authority under RSA 485:4,

¹ Wiggin Way Home Owners Association was formerly known as Wiggin Farm Home Owners Association, Inc., but changed its name in September 1999. The corporation was dissolved effective February 1, 2001, according to the records of the NH Secretary of State.

DES ordered Aquarion to seek approval from the Commission to establish a temporary connection of Aquarion's water distribution system to the Wiggin Way system on an emergency basis. DES further ordered Wiggin Way and Aquarion to meet with representatives of the Town of Stratham within 30 days of the date of its order to develop a list of steps that would be required for a permanent interconnection. Those steps are to include obtaining the approval of the Stratham Select Board as well as the filing of a request with the Commission for the expansion of Aquarion's franchise area into Stratham to permanently serve Wiggin Way customers.

On April 14, 2017, Aquarion filed a Petition to Charge Seasonal Rates for an Emergency Interconnection to provide service to Wiggin Way.

The Town of North Hampton and its Board of Water Commissioners (collectively, North Hampton) and the Town of Hampton (Hampton) filed petitions to intervene in this proceeding pursuant to N.H. Code of Admin. Rules Puc 203.17 and RSA 541-A:32. The Office of the Consumer Advocate (OCA) submitted a letter of participation pursuant to RSA 363:28.

On May 5, Staff recommended that the connection be approved subject to any conditions imposed by DES. Staff believed that the proposed temporary interconnection would be for the public good due to the potential for adverse impacts on public health and safety if it were not made. Staff also stated that it would be reasonable to apply Aquarion's seasonal rates to Wiggin Way. Staff represented that the OCA verbally indicated to Staff that it agrees with Staff's recommendation.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-062.html>.

COMMISSION ANALYSIS

Aquarion has submitted this petition to charge seasonal rates for a temporary interconnection pursuant to a DES order made under RSA 485:4.

If the department determines that an extension of water service from an existing public water supply system to the area of impaired water quality or quantity is the most feasible and cost-effective alternative, that the connection is consistent with municipal master planning, local water system policies and rules, RSA 9-B, and RSA 162-C:2, and that the existing public water system has adequate water supply and system capacity to serve the problem area, the municipality, corporation, or person who owns the public water system shall be ordered to allow connection to its water distribution system from the identified area, regardless of existing municipal or public water system service area boundaries.

RSA 485:4, II.

That statutory provision gives DES authority to order the connection and is consistent with DES's authority to "investigate the sanitary conditions and methods pertaining to the source, treatment, and distribution of all public water supplies for domestic use, and to require the application of any treatment or improvement ... as it may deem necessary to insure fitness and safety and adequate protection of the public health." RSA 485:4, I. The DES Order and Aquarion's petition seek Commission approval to allow a temporary connection to the Wiggin Way system by Aquarion, and to commence plans for a permanent connection. In its order, DES determined that Aquarion "has adequate water supply and system capacity to serve the residents of the Wiggin Farm and Winterberry subdivisions without adversely affecting its existing customers." DES Order ¶ 82. Moreover, based on cost and Aquarion's capacity, DES determined "that allowing the residents ... to connect the [w]ater [s]ystem to Aquarion's water distribution system is the most feasible and cost-effective option to address the [w]ater [s]ystem's arsenic and low water quantity issues." DES Order ¶ 83.

A. Intervenors

The standard for intervention is set forth in Puc 203.17 and RSA 541-A:32. The Commission may grant a petition for intervention if: (i) “[t]he petition states facts demonstrating that the petitioners rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (ii) [t]he presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” RSA 541-A:32, I(b)-(c). “The principles underlying the agency’s intervention practices ... are entirely different from the principles that apply to seeking review of agency decisions. The agency is free to permit third parties to participate in proceedings before it for such assistance as those parties may offer.” *Ruel v. N.H. Real Estate Appraiser Brd.*, 163 N.H. 34, 41 (2011) (quoting *Consolidated Edison v. O’Leary*, 131 F.3d 1475, 1481 (Fed. Cir. 1977)) (internal quotations omitted).

North Hampton states that it “is concerned that allowing this interconnection, except on a short term, emergency basis ... will negatively impact service to existing Aquarion customers in North Hampton” and that it “may also limit [Aquarion’s] ability to provide adequate service for anticipated residential and commercial growth in North Hampton, Hampton and Rye.” In its order, DES has stated that Aquarion has the capacity to provide service to its existing customers including those in North Hampton at the same time it provides service to Wiggin Way.

Aquarion’s existing customers include those in its entire service area. We do not believe that North Hampton has alleged how its rights, duties, privileges, immunities, or other substantial interest may be affected at this stage of the proceeding. The interconnection called for in this

proceeding is temporary. Moreover, North Hampton has stated it is not opposed to a short term, emergency interconnection.

Hampton states that its intervention is “needed now in order for Hampton to be kept fully informed of the Company’s and the Commission’s intentions and to be in a position to voice the [t]own’s concerns in a timely and meaningful way before any temporary connection is sought to be made permanent.” As stated previously, this proceeding involves Aquarion’s request to charge seasonal rates for an emergency temporary interconnection ordered by DES.

Because what is before us now are the terms for the service Aquarion is providing to Wiggin Way through the temporary, emergency interconnection, the towns do not qualify for intervention at this time. We recognize, however, that Aquarion may request that the temporary interconnection be made permanent. Accordingly, we defer rulings on the towns’ motions to intervene until Aquarion makes such a request.²

B. Temporary, Emergency Interconnection Rates

Aquarion intends to charge Wiggin Way its seasonal rate of \$5.619 per 100 cubic feet of water and a per season meter charge of \$1,873.05 for a 2” meter as provided for in its tariff. It intends to charge the seasonal rate, plus any other applicable miscellaneous charges to Wiggin Way through October 31, 2017, which will allow it enough time to come up with a permanent interconnection as called for in the DES Order. The temporary interconnection rates are the same rates approved last year in Docket No. 16-804, Order No. 25,938 (August 22, 2016). In that case, the Commission approved the emergency provision of water to Wiggin Way at Aquarion’s seasonal rates for a limited period of time. The Commission also required Aquarion to come before the Commission on October 5, 2016, to explain why a petition for an extension of

² The towns do not need intervenor status to keep themselves “fully informed” of what is happening in dockets at the Commission, as all filings are posted soon after they are received.

its franchise had not been filed if that emergency situation had continued, or to explain why the temporary connection was no longer required. The Commission closed that docket based on the representations that the temporary connection was no longer necessary and had been removed prior to the October 5 hearing date. Subsequently, DES issued its order requiring the connection.

In this case, we again approve the temporary interconnection to the Wiggin Way system at Aquarion's seasonal rate under the terms of its tariff, along with the other miscellaneous charges for connections and cross-connection testing as outlined in its petition. This docket will remain open pending Aquarion's petition to expand its franchise as ordered by DES.

Based upon the foregoing, it is hereby

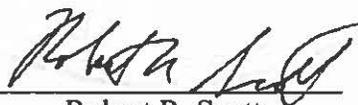
ORDERED, that the petitions of Hampton and North Hampton to intervene are hereby deferred pending the receipt of a petition to expand Aquarion's franchise; and it is

FURTHER ORDERED, that Aquarion may charge Wiggin Way rates that are no higher than its seasonal rate on file with the Commission plus other miscellaneous charges as of the date of connection with Wiggin Way through October 31, 2017.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 2017.



Martin P. Honigberg
Chairman

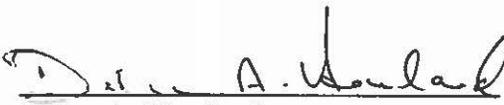


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES- DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 17-062-1 Printed: May 10, 2017

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.