

THE STATE OF NEW HAMPSHIRE

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Debra A. Howland



**PUBLIC UTILITIES COMMISSION**  
21 S. Fruit Street, Suite 10  
Concord, N.H. 03301-2429

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April 2, 2019

Marcia Brown, Esq.  
NH Brown Law, PLLC  
PO Box 1623, Concord, NH 03302-1623

Re: DW 19-065, Complaint of the Town of Hampton against Aquarion Water Company of New Hampshire, Inc.

Dear Ms. Brown:

On March 27, 2019, the Commission received a complaint from the Town of Hampton against Aquarion Water Company of New Hampshire, Inc. (Aquarion) concerning Aquarion's return on equity and snow removal from fire hydrants. (See attached.)

The Commission is treating this matter as a formal complaint pursuant to RSA 365:1 and 365:2 and N.H. Code Admin Rules Puc 204 and requires that Aquarion respond to the complaint on or before April 16, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra A. Howland".

Debra A. Howland  
Executive Director

Encl.

cc: Docket File  
Aquarion Water Company of New Hampshire, Inc.



**Town of Hampton  
LEGAL DEPARTMENT  
100 Winnacunnet Road  
Hampton, New Hampshire 03842**

DW19-065  
Mark S. Gearreald, Esq.  
Town Attorney  
Tel: 603-929-5816  
Fax: 603-929-5817  
mgearreald@town.hampton.nh.us

March 26, 2019

Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301-2429



Re: Aquarion Water Company of New Hampshire, Inc., Complaint by the Town of Hampton

Dear Ms. Howland:

Enclosed please find for filing in the above matter in behalf of the Town of Hampton, an original and seven (7) copies of this letter and of The Town of Hampton's Complaint regarding Aquarion Water Company of New Hampshire, Inc.

We are going to be serving this electronically as well in accordance with PUC Rule 203.02 and 203.03.

Thank you for your cooperation with regard to the above.

Very truly yours,

Mark S. Gearreald  
Hampton Town Attorney

cc: Board of Selectmen  
Frederick W. Welch, Hampton Town Manager  
Executive Director (electronically)  
Office of Consumer Advocate (electronically)  
Marcia Brown, Esq. (counsel for Aquarion)(electronically)

STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION

PETITIONER: TOWN OF HAMPTON

RE: AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

COMPLAINT BY TOWN OF HAMPTON

NOW COMES the Town of Hampton and complains against Aquarion Water Company of New Hampshire, Inc. (hereinafter "Aquarion") as follows:

**Count I: Overearning by Aquarion as to allowed Return on Equity and allowed rate of return, pursuant to N.H. RSA 365:1 and 29.**

1. In Order No. 25, 539 in DW 12-085, the Commission, after a contested hearing where competing experts testified (including one hired by the Towns of Hampton and North Hampton) set a rate of return on equity (ROE) of 9.6% [Aquarion had requested an increase in ROE from 9.75% to 10.25%], which set a corresponding overall rate of return of 7.49%.
2. Each percentage point of ROE in DW 12-085 was worth about \$154,000 in earnings.
3. Aquarion files annual reports in late March of each year reporting on earnings in the prior calendar year.
4. Aquarion's annual report for the year 2016, filed with the Commission in 2017, provided for the first time a figure for return on equity achieved, which was reported to be 13.11%, or 3.51% above the allowed 9.6% return on equity.
5. The Town of Hampton complained about these excessive earnings in DW 16-828, but the Commission denied any hearing thereon in Order No. 25, 982, dated January 27,

2017, stating that it does not review and approve the Company's earnings in WICA proceedings. In its earlier Order No. 25, 977 dated January 13, 2017, the Commission stated that it retains the right to review the earnings of utilities for reasonableness, referencing RSA 365:5 and 6, and directed Aquarion to file a calculation of its achieved rate of return and its achieved return on equity at the same time that it files its Annual Report.

6. Aquarion's Annual Report for the year 2017, filed with the Commission on April 2, 2018, reported that Aquarion had achieved a return on equity of 10.29%, or .68% above the allowed return on equity.
7. The Town again complained about these excessive earnings in DW 17-154, but the Commission ordered on p. 6 of its Order No. 26, 094 dated December 29, 2017 that "matters related to Aquarion's earnings position would be addressed as part of Aquarion's next rate proceeding." The Commission continued the reporting requirement from Order Nos. 25, 977, which it noted was "designed to give the Commission and Staff the ability to monitor Aquarion's achieved rate of return and its achieved return on equity."
8. In the context of dealing with this year's WICA surcharge Petition by Aquarion (DW 18-161), the PUC Staff performed an audit dated November 16, 2018 in which Staff for the first time analyzed the rate of return, cost of capital, and return on equity achieved by Aquarion since the most recently approved rate case DW 12-085, in Order 25, 539 issued June 28, 2013.
9. This Staff Audit concluded that "The Company appears to have been overearning, based on the Rate of Return calculations below, since 2013." Attached are the

calculations referred to, which demonstrate returns on equity Achieved by Aquarion that exceed by at least 1.5% higher each year, the 9.6% return on equity allowed by the Commission, and by as much as 7.75% higher in 2013.

10. These Staff Audit figures support the Town of Hampton's earlier complaints that redress of this situation by the Commission is necessary as Aquarion has thus received and retained hundreds of thousands of dollars in excessive earnings from its customers spanning at least 5 years (2018 having yet to be reported on). These excessive earnings ought to be returned and rebated to Aquarion customers in order for this Commission's rulings in DW 12-085 is to have any real meaning.
11. The terms of the settlement achieved in DW 18-161 has preserved the overearnings issue until "later proceedings," and the Town of Hampton is raising the overearnings issue at this time, as it already has in the 2016 and 2017 WICA cases, in order to avoid any claim that the Commission's ability to provide redress is somehow time barred.

WHEREFORE, the Town of Hampton requests that this Commission:

- A. Order Aquarion to rebate to its customers the earnings, with interest thereon, that Aquarion has received and retained from and including 2013, that exceed the rates of return on equity and allowed rate of return ordered by the Commission after the contested hearing in DW 12-085; and
- B. Award the Town of Hampton its attorney's fees and costs incurred in this matter; and
- C. Grant such other and further relief as may be just.

**Count II: Clearing Snow from Fire Hydrants, pursuant to N.H. RSA 365:1.**

1. In DW 18-161, the Town of Hampton complained to the Commission about the fact that Aquarion Water Company of New Hampshire relies upon the fire departments of the towns where its private fire hydrants are located to clear snow from those hydrants.
2. The private fire hydrants in question serve a critical public safety function in that, when properly maintained, they ensure that water is available to fight fires in the proximity necessary to reach a fire.
3. The Town of Hampton contains approximately 268 Aquarion owned fire hydrants and pays Aquarion over half a million dollars per year for the availability of the water these hydrants are to provide in the event of a fire. (See attached, the latest semi-annual bill dated January 3, 2019 from Aquarion to Hampton).
4. Aquarion neglects and refuses to shovel snow from its private hydrants to keep them clear, despite the Town of Hampton's having complained to Aquarion about its reliance upon highly trained and compensated Hampton firefighters to do this hard labor function, for which Aquarion pays nothing to the Town.
5. As confirmed as long ago as 1952, our Supreme Court in Clapp v. Jaffrey, 97 N.H. 456, 459 (1952) has upheld the ancient rule that tax monies cannot be used for the advantage of private individuals, especially where such individuals do not pay a fee for such service that no tax monies are being expended. Thus, Hampton taxpayers are illegally being forced to pay their firefighters to maintain private property of

Aquarion, exposing the firefighters to injury and hazardous conditions to which they should not have to be exposed.

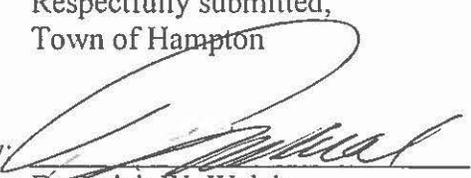
6. As part of the settlement in DW 18-161, Aquarion is to file a full rate case in 2020, and as part of that case is to prepare a cost of service study, which has not been updated since 2005.
7. The Town of Hampton has requested that Aquarion include the cost of clearing snow from the private hydrants that Aquarion owns in its update of the cost of service study, but Aquarion has refused to do so, leaving that issue to the next rate case, which will certainly not be heard until after the next winter snow season has passed and another year of firefighters shoveling has occurred, paid for by all the taxpayers of Hampton, even those who are not served by Aquarion water.

WHEREFORE, the Town of Hampton requests that the Commission:

- A. Order Aquarion to perform clearing of snow from the fire hydrants that it owns in the Town of Hampton using Aquarion's own employees or Aquarion paid contractors;
- B. Order Aquarion to include the cost of such snow clearing in the cost of service study for the next rate case; and
- C. Grant such other and further relief as may be just.

Respectfully submitted,  
Town of Hampton

By:

  
Frederick W. Welch  
Hampton Town Manager, duly  
authorized

Dated: March 20, 2019

**STATE OF NEW HAMPSHIRE**  
Inter-Department Communication

DATE: November 16, 2018  
AT (OFFICE): NHPUC

**FROM:** Karen Moran, Chief Auditor

**SUBJECT:** Aquarion Water Company of New Hampshire, Inc.  
DW 17-154 and DW 18-161 Water Infrastructure and Conservation  
Adjustment Mechanism  
FINAL Audit Report

**TO:** Steve Frink, Director Gas-Water Division, NHPUC  
Jayson Laflamme, Assistant Director Gas-Water Division, NHPUC  
Anthony Leone, Utility Analyst

**Introduction**

Aquarion Water Company of New Hampshire, Inc. (Aquarion) has been participating in the annual Water Infrastructure and Conservation Adjustment (WICA) since the Commission approved it as a pilot program by Order 25,019 issued on September 25, 2009 in docket DW 08-098. The WICA program was extended and modified by Order 25,539 issued June 28, 2013 in docket DW 12-085.

On October 15, 2018, Aquarion filed the October 1, 2017 – September 30, 2018 costs to be considered for recovery through the WICA surcharge, which is petitioned for implementation January 1, 2019.

**Projects Approved for 10/1/2017 through 9/30/2018**

In Docket DW 17-154, Aquarion petitioned for approval of its proposed 2018 projects to be eligible for recovery through the WICA surcharge mechanism. Order 26,094, issued December 29, 2017, approved a WICA surcharge of 7.08 percent, approved the planned 2018 WICA projects, and preliminarily approved the 2019 projects.

By letters to the Commission, the Company adjusted the proposed 2018 projects as follows:

Aquarion provided several schedules within the filing which fulfill the requirements for continuing property records. Within DS-1, Audit was able to verify the reported Mill Road-Atlantic Ave to Pine Road, North Hampton main replacement value of \$1,045,877, the associated retirements of \$91,840, with the asset set to depreciate at a rate of 1.20%, with ½ year convention applied to both the addition and the retirement.

**Retirements**

Filing schedule Attachment DS-1, page 3 of 3, notes the Mill Road project had \$91,839.77 of eligible asset retirements.

Aquarion provided a spreadsheet showing the asset number of 32 specific assets that were retired, the amount retired and if it was a full or partial retirement. A request for more detailed information was made, and the Company provided the details of the SAP general ledger retirement entries which took place in August, September, and revised in October 2018. The detail identified the location, account number, number of feet, type of pipe, and original year of capitalization. Retirements were properly credited to account 101000 and debited to Accumulated Depreciation-Retirements, account 111010.

**Calculated Rate of Return, Cost of Capital and Return on Equity**

For comparison and informational purposes, Audit has compiled the calculated rate of return, cost of capital, and return on equity percentages, as determined within the context of each year's annual report desk audit. The most recently approved rate case DW 12-085, by Order 25,539 issued 6/28/2013 authorized an overall Rate of Return of 7.49% based on a cost of equity 9.6% and cost of debt 6.05%. The Company appears to have been overearning based on the Rate of Return calculations below, since 2013.

<u>Year</u>	<u>Rate of Return</u>	<u>Cost of Capital</u>	<u>Return on Equity</u>
2012	05.67%	05.69%	05.21%
2013	10.83%	05.81%	17.35%
2014	10.43%	07.55%	12.58%
2015	09.60%	07.54%	11.13%
2016	11.70%	07.57%	14.76%
2017	09.22%	07.63%	11.16%



**AQUARION**  
Water Company

Stewards of the Environment™

Account Number: 200164669  
 Total Charges: \$254385.64  
 Statement Date: 01/03/19  
 Service for: Public Fire Charge  
 HAMPTON NH 03842



Contact Us: 1-800-732-9678  
 Website: www.aquarionwater.com

Meter #	Billing Period	Days	Meter Reading	Reading Type	Usage	Next Reading
Unmetered Account	01/03/19 - 07/01/19	180				Approximately 07/02/19

Account Detail

Outstanding Balance 254385.64  
 Payment Received (07/24/2018), Thank You -254385.64  
 Outstanding Balance 0.00

2019

Current Charges  
 Public Hydrant Charge 237565.97  
 \*\* WICA \*\* 16819.67  
 Total Current Charges Due By 02/04/2019 254385.64

Total Balance \$254385.64

Amount due 30 days after bill date: \$267104.92

**PAYMENT REQUEST**

ACCT.# 010,000,42992 4140,1000

*[Signature]*  
 TOWN MANAGER

**SPECIAL NOTES**

**CONTACT INFORMATION:** Please call our offices for questions about your account, payment locations or to obtain a copy of our rate schedules at (603) 926-3319 or toll-free (800) 403-4333. For after-hour emergencies, call (603) 926-3319 ext. 9.

**IMPORTANT NOTICE:** This is a bill for fire protection provided by Aquarion through its water system. It reflects the cost allocated to increase the size of the water supply, treatment facilities, pumps, storage tanks and pipes to provide adequate water to fight a fire 24 hours/day, 365 days per year and still meet the peak water demands of customers. There is no charge for the water used to fight a fire, which can be 100,000 gallons or more.

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Docket #:

**SERVICE LIST - DOCKET RELATED**

Printed: 4/2/2019

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