

**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 Approving Franchise Expansion, Acquisition of Assets,
and Application of Existing Rates**

O R D E R N O. 26,590

March 4, 2022

This order authorizes: (1) Aquarion Water Company of New Hampshire, Inc. (Aquarion, or the Company) to expand its existing franchise in North Hampton and Hampton to serve the Wiggin Way and Winterberry Lane subdivisions (Wiggin Way/Winterberry) in Stratham; (2) Aquarion's acquisition of the existing water system assets owned by the Wiggin Way Homeowners' Association; and (3) application of Aquarion's consolidated tariff rates to customers in the new franchise area. The order also denies the request of intervenors North Hampton and Hampton to apply an 18.70 percent surcharge on residents of Wiggin Way/Winterberry through Aquarion's tariffed rates to subsidize fire protection services in the neighboring towns of North Hampton and Hampton.

I. PROCEDURAL HISTORY

Aquarion is a regulated water utility that provides water service to a number of towns in New Hampshire, including approximately 9,600 customers in Hampton, North Hampton, and Rye. Aquarion currently also provides service on a temporary, emergency basis to 43 homes of Wiggin Way/Winterberry in Stratham pursuant to a 2017 mandate of the NH Department of Environmental Services (NHDES) set forth in Administrative Order No. 17-006 WD (March 29, 2017) and approved in Commission

Order No. 26,016 (May 10, 2017). On November 20, 2020, Aquarion filed a petition for Commission approval of: (1) a permanent franchise expansion to serve those customers in Stratham, (2) the acquisition of water infrastructure assets owned by the Wiggin Way/Winterberry Homeowners' Association (Wiggin Way HOA) in the Town of Stratham, and (3) application of Aquarion's existing consolidated tariff rates to the new franchise territory.

On February 19, 2021, the NH Department of Environmental Services (NHDES) filed its support for Aquarion's petition, noting that the Company seeks the proposed franchise extension pursuant to the findings and mandates in NHDES Administrative Order No. 17-006 WD. Specifically, that order was issued:

... to address public health issues at the Wiggin Way Homeowners' Association public water system in the Town of Stratham due to both water quantity and quality deficiencies associated with source capacity and arsenic contamination. Pursuant to its authority under RSA 485:4, II, the Department determined that an extension of water service from Aquarion to the Wiggin Way HOA water system was "the most feasible and cost-effective option to address the Water System's arsenic and low water quantity issues," and that Aquarion "has adequate water supply and system capacity to serve" the Wiggin Way HOA water system. Order at ¶¶ 82-83.

A prehearing conference was held on July 28, 2021, at which the Commission granted intervention to the Wiggin Way HOA pursuant to its motion filed on December 16, 2020. In a letter issued on September 1, 2021, the Commission granted the petitions to intervene filed by the Town of Hampton on December 8, 2020, and by the Town of North Hampton on July 26, 2021. The Office of the Consumer Advocate did not file a letter of participation in this proceeding.

The Company's petition and subsequent docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2021/21-093.html>.

II. POSITIONS

A. Aquarion

Aquarion seeks: (1) approval of a limited franchise expansion into a portion of the Town of Stratham to provide permanent water service to Wiggin Way/Winterberry in response to NHDES Administrative Order No. 17-006 WD; (2) approval and application of Aquarion's current consolidated permanent tariff rates to customers in Wiggin Way/Winterberry; (3) approval of the Asset Transfer Agreement between Aquarion and the Wiggin Way HOA pursuant to RSA 374:30; and (4) approval of any and all other relief as may be just and reasonable.

Aquarion argued that the 18.70 percent surcharge on Wiggin Way/Winterberry customers as proposed by the Towns of Hampton and North Hampton is arbitrary, has no cost basis, and is prohibited by statute per RSA 378:14, which states: *No public utility shall grant any free service, nor charge or receive a greater or lesser or different compensation for any service rendered to any person, firm or corporation than the compensation fixed for such service by the schedules on file with the commission and in effect at the time such service is rendered* (emphasis added in original petition).

B. Energy

The NH Department of Energy (Energy) supports approval of the Company's franchise extension, noting the Commission's findings in Order No. 26,506 (August 6, 2021) approving Aquarion's acquisition of the Abenaki Water System that Aquarion had demonstrated that it has the requisite experience and expertise to operate and serve Wiggin Way/Winterberry customers. Energy further argued that RSA 374:22 and 26 do not support the surcharge proposed by the Towns of Hampton and North Hampton and that such a surcharge would amount to a discriminatory penalty in violation of RSA 378:10 and 14. Energy also noted that NHDES Administrative Order

No. 17-006 WD supports approval of Aquarion's franchise expansion under RSA 374:22, III. Energy further argued that the application of Aquarion's current tariff rates to Wiggin Way/Winterberry customers would not constitute an undue or unreasonable preference or advantage to those customers under RSA 378:14, as the rates are currently applied to Aquarion's customers in Hampton and North Hampton.

C. Intervenors

1. Residents of Wiggin Way and Winterberry Subdivisions

The Wiggin Way HOA supports Aquarion's proposed expansion of water service to Wiggin Way/Winterberry, noting the NHDES mandate to the Company to serve those subdivisions due to arsenic contamination and the current inadequacy of water supply. The Wiggin Way HOA further testified that the Town of Stratham currently provides fire protection service to Wiggin Way/Winterberry residents, and that the water supply to provide that service is drawn from a pond and a 30,000-gallon cistern maintained by the Town.

2. Towns of Hampton and North Hampton

The Towns of Hampton and North Hampton (the Towns) requested that approval of the franchise expansion be conditioned on the application of a surcharge imposed on Wiggin Way/Winterberry customers. The Towns argued that Aquarion's proposal to serve Wiggin Way/Winterberry customers at the current tariffed rates would render an "undue, unreasonable preference or advantage" to Wiggin Way. The Towns argued that if the Commission approves the franchise expansion, it should impose a surcharge of 18.70 percent on each Wiggin Way/Winterberry customer to contribute to potential costs to the Towns to provide fire protection to the Wiggin Way/Winterberry subdivisions. In support of its request, the Towns argued that

without such a surcharge, the franchise expansion would create an “undue, unreasonable preference or advantage” to Wiggin Way customers under RSA 378:10.

III. COMMISSION ANALYSIS

A. Franchise Expansion and Consolidated Rates

The Commission will grant a request for franchise authority if it finds that it is for the public good. RSA 374:26. When determining whether a proposed franchise is for the public good, the Commission assesses, among other things, the managerial, technical, and financial expertise of the petitioner. We have already found that Aquarion meets these requirements. See *Abenaki Water Company, Inc. and Aquarion Company*, Order No. 26,506 at 11 (August 6, 2021) (“through its current ownership of New Hampshire utilities, [Aquarion] has demonstrated its managerial, financial, and technical capabilities to operate a utility in New Hampshire”).

However, under RSA 374:22, III, no water company shall obtain the permission or approval of the Commission to operate as a public utility without first satisfying NH Department of Environmental Services (NHDES) requirements concerning the suitability and availability of water. NHDES found that “Aquarion’s requested franchise expansion is a direct result of Administrative Order No. 17-006 WD, issued by the Department on March 29, 2017 (NHDES Order)” and “[p]ursuant to its authority under RSA 485:4, II, the Department determined that an extension of water service from Aquarion to the Wiggin Way HOA water system was ‘the most feasible and cost-effective option to address the Water System’s arsenic and low water quantity issues,’ and that Aquarion ‘has adequate water supply and system capacity to serve’ the Wiggin Way HOA water system.” NHDES Order at ¶¶ 82-83. That order further “*required* Aquarion to seek PUC approval of a franchise expansion into Stratham for a permanent interconnection.” *Id.* (emphasis added).

Based on our review of the record, including the NHDES Order, the support of the Department of Energy at the hearing on this matter, and testimony provided on behalf of Wiggin Way/Winterberry residents, we find that Aquarion has met the requirements to provide a permanent connection for water service to Wiggin Way/Winterberry customers. We further rule, based on Aquarion's petition in this proceeding, that expansion of the franchise area be limited to the Wiggin Way/Winterberry subdivisions in the Town of Stratham, as delineated in the map presented in the petition. See Hearings Exhibit 1 (Bates Page 73). We agree with NHDES that Aquarion has provided sufficient evidence of suitability and availability of water, as required by RSA 374:22, III, to support the extension of its franchise to the 43 homes of the Wiggin Way/Winterberry subdivisions in Stratham. As such, the approved franchise expansion is limited to the Wiggin Way/Winterberry subdivisions as delineated in the petition, and we direct the Company to submit revised tariff pages reflecting the boundaries of the approved franchise area within 15 days of issuance of this order.

Aquarion also requested authority to charge its current consolidated tariffed rates in the new franchise area. Pursuant to RSA 378:28, the Commission shall set permanent rates that are just and reasonable. See, e.g., Aquarion Water Company of New Hampshire, Inc., Order No. 25,539 (June 28, 2013). Based on the record, including testimony provided at hearing, as well as the NHDES Order, we find that the application of Aquarion's consolidated tariff rates to customers within the Wiggin Way/Winterberry subdivisions is just and reasonable.

B. Acquisition of Existing Infrastructure Assets

Aquarion further requested approval pursuant to RSA 374:30 of an asset transfer agreement between the Company and the Wiggin Way HOA. Under that

agreement, the existing water infrastructure assets currently owned by the Wiggin Way HOA will be transferred to Aquarion. Based on the testimony of Aquarion and that of the Wiggin Way HOA in support of the asset transfer, as well as NHDES Administrative Order No. 17-006 WD, we find that the transfer of the subject infrastructure is just and reasonable and in the public interest.

C. Proposed Surcharge on Wiggin Way and Winterberry Customers

The Towns of Hampton and North Hampton asked the Commission to approve an 18.70 percent surcharge on Wiggin Way/Winterberry customers through Aquarion's consolidated tariff. The Towns invoked RSA 378:10 to support their request, arguing that the statute prohibits any "undue or unreasonable preference or advantage to any person or corporation or locality" within a franchise territory. The Towns argued that as permanent customers of Aquarion, Wiggin Way/Winterberry customers should pay a surcharge to contribute to the funding of Hampton and North Hampton fire protection services, because without such a surcharge, those customers are receiving an "undue or unreasonable preference or advantage" by not contributing to the costs incurred by the Towns to provide occasional fire protection to Wiggin Way/Winterberry residents.

We find no basis on which the Towns' request can be supported. The Towns misconstrue the statute. The record demonstrates that the Town of Stratham provides fire protection to residents of Wiggin Way/Winterberry and that those residents pay town property taxes to support that service, as do Hampton and North Hampton residents in their respective towns. Further, the record demonstrates that the incremental cost imposed by Aquarion's acquisition of the Wiggin Way system is sufficiently covered by the revenue that will be generated through the application of Aquarion's consolidated tariff to the customers of Wiggin Way.

To approve a surcharge on the 43 residents of the Wiggin Way and Winterberry subdivisions in Stratham, as the Towns propose, would conversely *create* an “undue, unreasonable preference or advantage” to the residents of both Hampton and North Hampton by effectively subsidizing non-residents to contribute to the cost of fire protection services provided by the Towns of Hampton and North Hampton and paid for through taxes levied on the residents of those towns. As both the Company and Energy argued, RSA 378:10, when properly applied, prohibits such an outcome. *See, e.g.,* Docket DG 16-827 Concord Steam Corporation Non-Governmental Customers, Order No. 26,017 (May 11, 2017) at 11-12 (approving fund proposal would set a dangerous precedent, as it could enable regulated utilities to circumvent the provisions of RSA 378:10 to benefit small groups of customers, granting them undue and unreasonable preference or advantage with relatively large “grant” sums, earning a regulated rate of return, from the general customer base of utilities). The Towns’ request for such a determination and surcharge are denied.

Based upon the foregoing, it is hereby

ORDERED, that the petition of Aquarion Water Company of New Hampshire, Inc. for a limited franchise expansion to serve the subdivisions of Wiggin Way and Winterberry Lane in Stratham is GRANTED; and it is

FURTHER ORDERED, that the petition request to approve the asset transfer agreement conveying ownership of the existing water infrastructure assets from the Wiggin Way Homeowners Association to Aquarion Water Company of New Hampshire, Inc. is GRANTED; and it is

FURTHER ORDERED, that the petition request to apply the rates, terms, and conditions of Aquarion Water Company of New Hampshire, Inc.’s consolidated tariff to

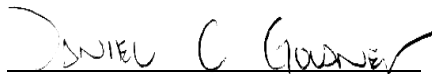
Wiggin Way and Winterberry Lane subdivision customers for service rendered as of the effective date of this order is GRANTED; and it is

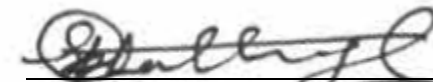
FURTHER ORDERED, that the request of the Towns of Hampton and North Hampton that Aquarion Water Company of New Hampshire, Inc. be required to levy an 18.70 percent surcharge on Wiggin Way and Winterberry Lane customers to subsidize fire protection service in Hampton and North Hampton is DENIED; and it is

FURTHER ORDERED, that Aquarion Water Company of New Hampshire, Inc., shall file an updated franchise boundary description, tariff pages, and map with the Commission on or before March 21, 2022, to reflect the approved service area; and it is

FURTHER ORDERED, that Aquarion Water Company of New Hampshire, Inc, shall file a compliance tariff with the Commission on or before March 21, 2022, in accordance with N.H. Admin. R., Puc 1603.05(d).

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 2022.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket# : 21-093

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