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August 31, 2017

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

1 SEP '17 AM 8:26

**Re: Docket No. DW 17-114**  
***Joint Petition for Approval of the Acquisition of Aquarion Water Company of New Hampshire, Inc. by Eversource Energy***

***Secretarial Letter of August 28, 2017***

Dear Director Howland:

The Commission recently issued a Secretarial Letter (the "Letter") in this proceeding dated August 28, 2017, regarding "Results of Prehearing Conference and Procedural Schedule." In that Letter, the Commission states, "At the prehearing conference, Eversource Energy and Aquarion Water Company agreed to waive the time periods under RSA 369:8[II](b) but not the 'protections' of the 'adverse effect' standard, so long as the petitioners receive an order fully deciding their petition no later than October 25, 2017." The Letter continues by stating that, "The Commission has accepted the petitioners' waiver... ."

Although the Letter accurately portrays the willingness of Eversource Energy and Aquarion Water to accept a schedule calling for a Commission determination regarding the Petition on or before October 25, 2017, the Letter is incorrect that the Petitioners agreed to "waive" the statutory deadlines included in RSA 369:8, II(b). What the Petitioners agreed to was to "toll" those deadlines until the October 25 date.

The Transcript of the August 17, 2017, Prehearing Conference clearly demonstrates that the concept of a waiver of the statute was discussed, but was not acceptable to the Petitioners.<sup>1</sup> Instead, at the suggestion of Staff Counsel, the Petitioners agreed to "toll" the statute. *See* Transcript, p. 97, line 23: "We [Petitioners] would consider tolling the statute until the date of October 25<sup>th</sup> so that the Commission can act." The Commission (by the Chair) and counsel for Hampton later discussed such a tolling of the statute.<sup>2</sup> Staff Counsel succinctly summarized the agreement that had been reached:

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<sup>1</sup> *See, e.g.*, Transcript references at p. 83, line 16; p. 86, line 17; p. 94, lines 20 and 24; p. 83, line 16.

<sup>2</sup> *See, id.*, p. 98, line 3; p. 106, line 21.

*And all we've agreed to today, and  
the Staff agrees with the proposal put forth by  
the Company, that we're tolling the date.  
We're not tolling the statute, but the statute  
that controls here is 369:8, we're going to  
toll the date that the approval is final.*

Transcript, p. 110, line 6.

The Petitioners are concerned that the Secretarial Letter may cause confusion regarding the legal distinction between a “tolling” of the statute’s deadline versus a “waiver” of those deadlines.<sup>3</sup> The Petitioners wish to clarify that they have agreed to toll the 60-day time period set forth in RSA 369:8, II(b)(2) until October 25, and not to waive the application of the statute in any respect.

Please let me know if you have any questions.

Sincerely,



Robert A. Bersak  
Chief Regulatory Counsel

cc: Service List via e-mail per Puc 203.11 (a)(1)

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<sup>3</sup> Consider the difference between the “tolling” of a statute of limitations (i.e., extending it) versus a “waiver” (i.e., giving up an affirmative defense).

**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

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**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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**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  
EXECUTIVE 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.**