

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 10-293

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

**Water Infrastructure and Conservation Adjustment 2011-2013 Projects
and 2011 Surcharge**

Order *Nisi* Granting Petition

ORDER NO. 25,186

December 22, 2010

I. BACKGROUND

Aquarion Water Company of New Hampshire, Inc. (Aquarion) is a regulated public utility as defined by RSA 362:2 and 362:4 and provides water service to approximately 8,770 customers in the towns of Hampton, North Hampton and Rye. On November 1, 2010, Aquarion filed its petition for approval of its 2011 Water Infrastructure and Conservation Adjustment (WICA) surcharge and its proposed 2011-2012 capital projects under its WICA tariff provision. The WICA tariff provisions were approved as a pilot program in Aquarion's rate case, Docket No. DW 08-098, *see Aquarion Water Company of New Hampshire*, Order No. 25,019 (Sept. 25, 2009). The purpose of the WICA is to allow Aquarion to recover the fixed costs of certain pre-approved non-revenue producing capital improvements completed and placed in service between general rate cases. Aquarion requests Commission approval of a surcharge to customer bills to reflect recovery of \$721,546 in 2010 WICA capital spending. These projects were approved by the Commission's Order in Docket No. DW 09-211, *see Aquarion Water Company of New Hampshire*, Order No. 25,065 (Jan. 15, 2010), for which a budget of \$908,000 was approved.

Aquarion's 2010 capital spending for WICA projects totaled \$721,546 and includes: water main replacements costing \$574,020; replacement of customer meters costing \$104,061; and replacement of services, hydrants, valves and production meters costing \$43,465. Including return, depreciation expense, and taxes, Aquarion seeks new revenues of \$89,142. To recover these revenues, Aquarion, in its petition, sought a 1.4896 percent surcharge to customer bills, for service rendered on or after January 1, 2011.¹

Aquarion, in conformity with the WICA provisions, also seeks Commission approval for its proposed 2011 WICA capital projects, which would be included in the WICA surcharge for service rendered on and after January 1, 2012. These projects have a construction budget in the amount of \$988,012, and, as with its 2010 WICA spending, the majority of this investment is dedicated to the replacement of water main. Furthermore, Aquarion seeks preliminary Commission approval for its proposed 2012 projects, with total WICA capital spending in the amount of \$492,807. Aquarion also has provided a list of proposed 2013 projects for advisory purposes.

On December 15, 2010, Staff filed a letter recommending approval of Aquarion's filing on behalf of Staff, Aquarion, the Town of Hampton, and the Town of North Hampton. (The Office of the Consumer Advocate did not participate in this case). Staff stated that it conducted discovery and met with parties in a technical session; the Town of North Hampton also conducted its own discovery. Staff attached to its letter selected Aquarion responses to Staff's discovery requests. Staff indicated that certain corrections and adjustments resulting from

¹ According to Aquarion's tariff as approved by the Commission, a WICA surcharge will be determined by the proportion of incremental revenues resulting from the pre-tax return on completed plant, plus depreciation and property tax, compared to the total revenue requirement approved in Aquarion's last general rate case. The WICA surcharge amount will be the resulting percentage times the current customer bill amount.

discovery responses result in a recommended 2011 WICA surcharge of 1.5715 percent, which would generate new revenues of \$93,614. A typical residential customer taking 67,000 gallons of water annually would see an increase in their annual bill of \$7.64, or about \$0.64 per month. Staff and the parties also recommended that the Commission approve Aquarion's 2011 WICA construction budget of \$988,012, comprised primarily of main replacement. Completion of these proposed projects would result in a 2012 cumulative WICA surcharge of 3.7825 percent, which would reflect recovery of both 2010 and 2011 WICA projects. A typical residential customer would realize a total bill impact of \$18.40 annually in 2012, or about \$1.53 per month. Staff and the parties also recommended that the Commission approve Aquarion's projected 2012 WICA projects totaling \$492,807 on a preliminary basis. Staff and the parties assert that the completed 2010 WICA projects are prudent, used and useful. Staff further advised the Commission that Aquarion had provided advance notice of the WICA filing and surcharge request, through bill inserts beginning in September 2010.

On December 3, 2010, Aquarion filed a Motion for Confidential Treatment relating to its response to Staff Data Request 1-1, presenting the identities and bid offer amounts of potential contractors for an Aquarion WICA-related project. Aquarion argues that releasing this information will result in a competitive disadvantage to it in the form of less advantageous or more expensive construction contracts. According to Aquarion, disclosure of the identities and bid offers of its potential contractors would have a chilling effect on future bidding for Aquarion projects, in that disclosure of these terms would cause competitive harm to the bidders for the project considered in Staff 1-1. Likewise, disclosure of Aquarion's pricing terms for such projects to third parties, including competitors, could cause Aquarion direct competitive harm.

As such, Aquarion contends that disclosing its confidential commercial information would cause it competitive disadvantage and that the information should, therefore, be exempt from disclosure under RSA chapter 91-A, and otherwise be treated as confidential.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2010/10-293.htm>

II. COMMISSION ANALYSIS

In Order No. 25,019, the Commission approved the WICA as a pilot program to allow Aquarion to place into rates a surcharge to recover its investment in replacing aging infrastructure; Aquarion has submitted completed and proposed projects and associated budgets for our review. In 2010, Aquarion actually spent \$721,546 for projects approved in Order No. 25,065; for 2011, Aquarion proposes to spend about \$988,000, largely for water main replacement. For 2012, Aquarion proposes a construction budget of \$479,000, \$300,000 of which is dedicated to water main replacement. Aquarion's filing, as well as its responses to discovery requests, shows that it continues to develop a priority list of needed improvements to its physical plant, including water mains and valves. Staff, Hampton, and North Hampton have reviewed the three-year list of WICA projects, conducted discovery, and met with Aquarion in a technical session to discuss the filing. Staff has also clarified and resolved issues related to minor computational errors by Aquarion. Staff, Hampton, and North Hampton recommend approval of Aquarion's filing with the noted modifications.

Having reviewed Aquarion's filing and the recommendations of Staff, Hampton, and North Hampton, we approve Aquarion's 2011 WICA surcharge, as recommended by Aquarion,

Staff, Hampton, and North Hampton for completed 2010 WICA projects that were previously approved in docket No. DW 09-211. Also, we approve the 2011 schedule of WICA projects. We are satisfied that the proposed capital projects and budget for 2011 are reasonable and necessary, and fulfill the objective of the WICA program to accelerate the replacement of aging infrastructure. Thus, we find the investment decisions to be prudent. Our approval of the 2011 projects will permit Aquarion to seek cost recovery of those projects in its 2011 WICA filing to be submitted on or before November 1, 2011. At that time, prior to permitting Aquarion to recover on those assets, we will determine whether the projects are, in fact, used and useful in the provision of utility service, pursuant to RSA 378:28. We will also approve the schedule of 2012 projects on a preliminary basis, understanding that Aquarion, Staff and the parties may make further recommendations once the 2011 filing is made and reviewed.

As to Aquarion's motion for confidential treatment, in determining whether commercial or financial information should be deemed confidential and private, we consider the three-step analysis applied by the New Hampshire Supreme Court. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009) at 3 (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)). First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure; when commercial or financial information is involved, this step includes a determination of whether an interest in the confidentiality of the information is at stake. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does

not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. *Id.* The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. N.H. Code Admin. Rules Puc 203.08(b).

No party has objected to Aquarion's request for confidential treatment. We begin our analysis by noting that the information Aquarion seeks to protect relates to bidding information. As noted by Aquarion, third parties who may obtain the information would be aware of the bidders' pricing terms. Such disclosure may harm Aquarion's competitive position, in that its competitors would be aware of its pricing terms, and also harm the competitive position of Aquarion's bidders, in that the competitors of the bidders, in turn, would be made aware of the bidders' pricing arrangements. This could have a chilling effect on Aquarion's ability to attract competitive bidders for its projects. Moreover, protection of this information may redound to the benefit of Aquarion's customers to the extent Aquarion is able to negotiate more favorable arrangements. Accordingly, we conclude that there is a privacy interest at stake which would be invaded by disclosure.

As to the public's interest in disclosure, the information at issue concerns the identity and offer terms for bidding on an Aquarion WICA-related project. This information relates to the Aquarion's financial arrangements with potential contractors, but reveals little if anything about the functions of the Commission. *See Unital Corp. and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009) at 3 (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)). While the information is, in some sense, informative about the finances of the utility, which are subject to the Commission's scrutiny, we nevertheless conclude that any public interest in disclosure is slight. This is so because little information about the Commission, including the processes by which it reviews such information, or the conclusions drawn therefrom, would be discerned by disclosure. Balancing the above interests, we conclude that Aquarion's interest in privacy outweighs the public's interest in disclosure. Accordingly, we grant Aquarion's motion for confidential treatment. Consistent with Puc 203.08(k), our grant of the motion for confidential treatment is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, Aquarion Water Company of New Hampshire, Inc.'s 2011 WICA surcharge of 1.5715 percent is APPROVED; and it is

FURTHER ORDERED, that Aquarion's schedule of 2011 capital projects under its WICA tariff is hereby APPROVED; and it is

FURTHER ORDERED, that Aquarion's schedule of 2012 projects is approved on a preliminary basis, subject to further recommendations of the parties in the fall of 2011; and it is

FURTHER ORDERED, that Aquarion shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than January 3, 2011 and to be documented by affidavit filed with this office on or before January 24, 2011; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than January 10, 2011 for the Commission's consideration; and it is

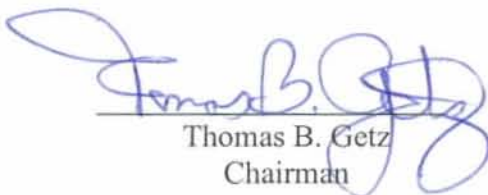
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 17, 2011; and it is

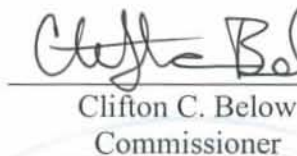
FURTHER ORDERED, that this Order *Nisi* shall be effective January 24, 2011, unless Aquarion fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

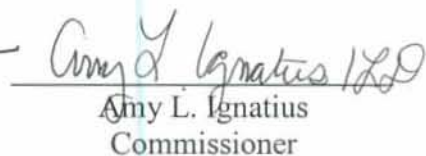
FURTHER ORDERED, that Aquarion shall file a compliance tariff with the Commission on or before January 5, 2011, in accordance with N.H. Code Admin. Rules Puc 1603.02(b); and it is

FURTHER ORDERED, that Aquarion's motion for confidential treatment is GRANTED, as set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-second day
of December, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Lori A. Davis
Assistant Secretary

