

August 27, 2021

Dianne Martin, Chair
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Bow (VSE) and Tioga (Belmont) Intervenor's Response to August 20, 2021 Amended Filing of Joint Petitioners Abenaki Water Company and Aquarion Company

Dear Chair Martin:

On August 6, 2021, the Commission determined that the proposed acquisition of Abenaki Water Company ("Abenaki") and its parent company NESB by Aquarion Water Company ("Aquarion") would have an adverse impact on rate payers. Accordingly, as a preliminary matter, the Commission denied the acquisition. However, the Commission invited the Joint Petitioners to amend their filing and provided a roadmap by which the Joint Petitioners could amend their filing by addressing and alleviating the concerns of the Commission and ultimately receive Commission approval.

Instead of offering an amended filing, the Joint Petitioners submitted a 215-page rebuttal of the Commission's Preliminary Finding. This included 32 pages of alternative or "Supplemental" testimony from Mr. Vaughan and Mr. Morrissey. This testimony was privately crafted by counsel to support the Joint Petitioner's opposition to the Commission's concerns and subsequent finding of adverse effect. Through their alternative "Supplemental Testimony", the Joint Petitioners argue that the Commission made several flawed and incorrect determinations in their Preliminary Finding. These include determinations relative to the impaired condition of the Abenaki assets, recovery of rates based upon the pre-acquisition asset book values, and benefits of the merger. The "Supplemental Testimony" also implies that the Commission acted improperly by not adopting the recommendations of the Office of Consumer Advocate ("OCA") and Department of Energy ("DOE") representatives. While the regulatory body of the PUC looks almost exclusively to the statutes to determine the scope of their authority, and we acknowledge the proposed acquisition is not being evaluated in a court of law, we believe some basic common law principles, including due process shall not be ignored. The "Supplemental Testimony" of Mr. Morrissey and Mr. Vaughn was conducted outside of the NH PUC hearing process following the Preliminary ruling of the PUC. There was no opportunity for the PUC Commissioners, OCA, DOE, or any of the Intervenor's to address this "testimony" in any capacity. As a result, all parties EXCEPT the Joint Petitioners and their lawyers were precluded from procedural due process in this instance and therefore we believe the self-serving "Supplemental Testimony" should not be allowed or admitted in DW 21-090.

We believe that the Commission acted properly and in the best interests of the consumer while balancing the interests of the Joint Petitioners. We believe the Joint Petitioners have an opportunity to amend their filing based on the roadmap set out by the PUC on August 6, 2021. However, should the PUC entertain the Joint Petitioner's rebuttal, and allow the "Supplemental Testimony",

the intervenors of the Bow (VSE) and Tioga Belmont Communities, wish to address the aforementioned "Supplemental Testimony" as set forth below:

Impaired Condition and Viability of Abenaki Assets

Testimony and discovery of both parties in the Rate Case (DW 20-112), as well as other completed dockets (DW 17-165, DW 19-131 and IR 21-024) clearly established the existence of serious deficiencies in several of Abenaki's assets including the Bow, Omni Hotel in Rosebrook and Belmont Tioga water systems. Even before the rate case was filed, Abenaki sent a letter (see attached About_the_White_Rock_Water_System pdf) to Bow customers warning them of system deficiencies including substandard fittings at mains and service connections, insufficient well production, insufficient number of main valves, and leaks in the storage tanks. The letter concluded by stating that the condition of the system "makes it difficult to efficiently and cost effectively operate the system".

In his testimony June 28th, Mr. Morrissey stated that Abenaki was a "basket case" and "nearly non-viable" (**See Afternoon Transcripts of June 28, 2021, page 545, lines 11-14**). In an effort to mitigate the damage of Mr. Morrissey's testimony, Mr. Vaughn offers the Commission alternative "Supplemental Testimony". According to Mr. Vaughn, Mr. Morrissey used the terms "basket case" and "non-viable" to describe the financial condition of Abenaki and not the management condition of the company. However, testimony in both dockets established that the absence of effective management practices contributed to the current financial condition of Abenaki. The failure of Abenaki to pro-actively plan and address the aforementioned chronic system impairments ultimately resulted in large revenue losses. The preventable costs of regularly trucking in water, emergency repairs and replacement of substandard fittings, and leaking storage tanks, all contributed to the loss of revenue. Subsequent additional purchases of sub-par community systems with minimal / poor due diligence also compounded the impaired condition of the system as a whole and led to the current financial predicament. It is hard to comprehend what kind of ethical, competent and effective business strategies were in place that would support the continued purchase of failing community systems while the existing entity is severely struggling. One clear strategy that was utilized by Abenaki and NESC was to load the burden of those poorly made business decisions directly onto the backs of the rate payers in Bow (VSE), Tioga Belmont and Rosebrook, with unfathomable rate increase requests all the while the principals of Abenaki and NESC appear to have experienced financial gain.

Benefits of Acquisition

In his testimony before the Commission on the morning of June 28th, in response to questioning from the OCA, Mr. Morrissey confirmed that post-merger, Aquarion will have no legal responsibility for what happens at Abenaki. According to Mr. Morrissey, "they are two separate legal entities-separate businesses" (**See Morning Hearing Transcript of June 28, 2021, page 66**). When questioned by the OCA about the stated benefits of the merger, Mr. Morrissey testified that he could not "guarantee" that Abenaki customers would actually realize any post-merger benefits (**See Morning Hearing Transcript of June 28,2021, pages 54-55**). Mr. Morrissey further testified that he could not "promise" environmental system issues would be resolved as a result of the merger (**See Morning Hearing Transcript of June 28,2021, pages 70-71**).

This limited post-merger relationship isolates Abenaki and customers from receiving the stated technical and financial benefits which Aquarion claims to offer. Moreover, this limited relationship could serve as an impediment for any future legal proceedings against Abenaki. Aquarion is willing however, to fully absorb the Massachusetts and Connecticut water companies. Aquarion's unwillingness at this time to absorb Abenaki into their existing New Hampshire holdings is support for the theory that Aquarion intentionally wants distance between Abenaki and itself, while maintaining the ability to more easily cut ties if necessary or if an opportunity arises. Such a limited post-merger arms-length relationship does not benefit the customers and rate payers as Mr. Morrissey will not "guarantee" or "promise" benefits that will be realized by the other NESC entities in Massachusetts and Connecticut. To the contrary, it is clear from this corporate structure that Aquarion does not wish to share in either any current/future issues, or any liabilities related to Abenaki.

We believe that a complete merger of Abenaki into Aquarion New Hampshire is the only way to ensure that customers actually realize the benefits touted by the Joint Petitioners. To do otherwise simply perpetuates the NESC-Abenaki "partnership" which has plagued its customers for years. As intervenors and professionals across various industries and fields, we understand that this may not be able to be accomplished overnight, however a prospective plan could be considered.

Mr. Morrissey stated that he believes a full merger is at least two years away. He could not narrow down the timeline for such merger. Mr. Morrissey believes that a full immediate merger is just "too complicated" (**See Morning Testimony of June 28, 2021, page 23**). We believe that solving the "complications" will be well worth the effort. A full merger should certainly benefit customers, as well as the companies. Abenaki and NESC's corporate goal for profit has circumvented and outshined the most basic need (i.e., drinkable water) of the consumers. As Mr. Morrissey stated, "we want happy customers" (**See Afternoon Testimony of June 28, 2021, page 46 line 5 and page 50, line 20**). Happy customers make a happy company. Aquarion, and more globally, Eversource, has the UNIQUE opportunity to do the right thing in this acquisition case, so that ALL parties win. Should an immediate complete merger of Abenaki into Aquarion New Hampshire not be agreed, the intervenors are requesting a reasonable, concrete date for a merger of Abenaki into Aquarion to be filed with the PUC. If the Joint Petitioners are not willing to immediately merge Abenaki into the Aquarion New Hampshire holdings, the Intervenor is adjusting our position such that we request the Joint Petitioners agree to withhold any petition for a future rate case until a period of 1 year after full integration of Abenaki into Aquarion. In their June 29, 2021 status update letter, the Joint Petitioners already committed that, conditioned on a preliminary finding of no adverse impact, and closing on the Acquisition on or before December 31, 2021, they would delay any future rate case until 12 months actual cost data – on a calendar year basis – under Aquarion ownership. Aquarion has a unique opportunity to establish good will and correct past inequities with its customers at the start of this new relationship. They have the opportunity to secure "happy customers" which is precisely what Mr. Morrissey stated that he wanted. Moreover, it would certainly show their entire customer rate base, especially for those who are most compromised and would otherwise be financially devastated by rising rates, that Aquarion and Eversource intend to do the right thing for their ENTIRE service base (i.e., across the parent company and any temporary subsidiary, as well as across all of their product lines as Eversource already serves as the power utility for these customers).

Withdrawal of Rate Case

On page 22 of his alternative “Supplemental Testimony”, Mr. Vaughn incorrectly states that “withdrawal of rate case was executed”. In fact, the Joint Petitioners have only offered to withdraw the rate case contingent upon the Commission issuing a finding of no adverse impact and approving the merger. The rate case remains active and continues to appropriately influence the decisions of the Commission, based on data findings through Technical Sessions and subsequent responses to date. The rate case is just one of several factors contributing to the Commission’s Preliminary Finding. Other issues including water system impairments and water quality were significant factors considered by the Commission.

We urge Abenaki to withdraw the rate case now. Making the withdrawal contingent upon Commission approval serves as carrot of persuasion. Withdrawing the rate case now sends a clear signal that the motives of the Joint Petitioners are genuine and sincere.

In conclusion, we find that the Joint Petitioners have failed to offer any compelling reason for the Commission to rescind its Preliminary Findings. In addition to examining hundreds of pages of docket related filings, the Commission conducted two long days of Public Hearings which afforded the Joint Petitioner’s and their Council more than sufficient opportunity to fully explain their original filing. As noted in their Preliminary Findings, the Commission has determined that the Joint Petitioners failed to adequately address several of the same concerns raised by the OCA, DOE and intervenors present at those hearings. The Joint Petitioners now come forward with alternative testimony recorded in a private setting, guided by Council, and specifically crafted to enhance their previous testimony of June 28-29 and mitigate the damage. The Commission, OCA, DOE and intervenors did not have the opportunity to question Mr. Vaughan or Mr. Morrissey during their “Supplemental” testimony. Accordingly, we believe that the official records of this docket should be limited to those submitted in accordance with the Commission’s statutory and regulatory guidelines.

We urge the Commission to reject the amended filing of the Joint Petitioners as it is currently written. We strongly urge the Joint Petitioners to consider providing a concrete timeline for the Merger filing of Abenaki and Aquarion Companies to supplement the amended filing in order to render the support of the intervenors.

Sincerely,

Cristy Bresson

Jeni Speck

Representatives for Bow (VSE) Intervenors

Jeffrey Phillips

Representative for Tioga (Belmont) Intervenors