

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.**

Docket No. DW 17-062

**PETITION FOR APPROVAL OF FRANCHISE EXPANSION,
ACQUISITION OF ASSETS, AND APPLICATION OF EXISTING RATES**

Pursuant to: RSA 485:41; the New Hampshire Department of Environmental Services (“DES”) Administrative Order No. 17-006 WD dated March 29, 2017; the “Decision and Order” of the New Hampshire Water Council in its Docket No. 17-06 WC dated October 25, 2019; the New Hampshire Public Utilities Commission (“Commission”) Order No. 26,016 dated May 10, 2017; RSA 374:22; RSA 374:30; and Puc 202.01(a), Aquarion Water Company of New Hampshire, Inc. (“Aquarion”) respectfully petitions the Commission to issue an order authorizing Aquarion to provide permanent water service to homes in the Wiggin Way/Winterberry subdivisions in the Town of Stratham. To effectuate this service, Aquarion seeks: i. approval of the expansion of its franchise into a limited area in the Town of Stratham; ii. approval of the contract for the acquisition of certain existing water distribution infrastructure assets by Aquarion; and, iii. approval for Aquarion to apply its existing tariff rates to these new customers.

Aquarion seeks the actions in this petition under this docket pursuant to this Commission’s direction to do so in Order No. 26,016 dated May 10, 2017, stating at page 6, “[t]his docket will remain open pending Aquarion's petition to expand its franchise as ordered by DES.”

A. BACKGROUND AND PROCEDURAL HISTORY

1. This matter has already been addressed by this Commission in the instant proceeding as well as in Docket No. DW 16-804 *Petition for Authorization for Temporary Emergency Connection with Wiggin Farm Homeowners Association* (now closed).

2. The procedural history of this petition's issues began with the issuance of DES Administrative Order No. 17-006 WD on March 29, 2017 (the "DES Order")¹ ordering that Aquarion temporarily interconnect with the water system operated by the Wiggin Way Homeowners' Association ("WWHA") for the provision of water to WWHA members, and to transition that temporary connection to permanent water service by Aquarion once the DES Order became final. DES Order at 9.

3. The DES's authority over Aquarion arises from RSA Chapter 485, the "New Hampshire Safe Drinking Water Act." Specifically, DES has the authority to order the "extension of water service from an existing public water supply system to the area of impaired water quality or quantity". RSA 485:4, II.

4. The DES Order was appealed by the Towns of Hampton and North Hampton to the New Hampshire Water Council. On October 25, 2019, the Water Council issued its Decision and Order in its Docket No. 17-06 WC rejecting the Towns' appeals.² The rehearing period for that Order expired on November 25, 2019 and became final on that date as no rehearing motions were filed.

5. Upon the finality of the DES Order, Aquarion and WWHA began work on the Order's provision that "[WWHA] and Aquarion shall complete the remaining steps required for permanent interconnection." DES Order at 9. Those actions have included negotiation of an Asset Transfer Agreement ("ATA") with WWHA that will govern the terms for Aquarion acquiring the existing water distribution system infrastructure and property rights.

B. REQUEST FOR APPROVAL OF EXPANSION OF FRANCHISE

6. The DES Order directs Aquarion to "[file] a request with the PUC to expand the service area of Aquarion into Stratham to provide water to the residents of the Wiggin Farm and Winterberry subdivisions." DES Order, pg. 9, paragraph 3.

¹ The DES Order was filed as an attachment to the petition of Aquarion in this docket on April 14, 2017 and is available from the Commission's virtual file room for this docket at <https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-062.html> and included with this petition as Attachment 'A'.

² See Water Council Docket No. 17-06 Decision and Order included as Attachment 'B' and available online at: <https://www4.des.state.nh.us/Legal/?jump=Appeals/Water%20Council>.

7. RSA 374:22 requires approval by the Commission of a franchise to engage in the business of a public utility as follows:

374:22 Other Public Utilities. -

- I. No person or business entity ... shall commence business as a public utility within this state, or shall engage in such business, ... or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission . . .
- II. No water company shall obtain the permission or approval of the commission to operate as a public utility without first satisfying any requirements of the department of environmental services concerning the suitability and availability of water for the applicant's proposed water utility.

8. Per Rule Puc 1603.05(c), attached hereto as Attachment C is a map reflecting the new service area Aquarion has been ordered to serve in the Town of Stratham by the DES Order. In conjunction with the expansion the existing well serving identified on the Attachment C map will be bypassed, requiring a new 20 foot wide distribution easement across four parcels (Map 10, Lots 129, 130, 131 & 132) as well as ratification of existing access and utility easements upon four additional parcels (Map 10, Lots 136, 137, 138 & 139) for the benefit of Aquarion, which the Board of the WWHA will obtain in accordance with Section 6.1 of the ATA.

9. The limited area in the Town of Stratham for which Aquarion seeks a franchise expansion includes the Wiggin Way and Winterberry subdivisions. This geographic area is adjacent to Aquarion's existing franchise territory in the Town of North Hampton.

10. The Town of Stratham supports this request. Letters evidencing this support from the Town of Stratham Select Board dated January 9, 2020 and the Town of Stratham Planning Board dated September 2, 2016, are included as Attachment D.

11. The expansion of Aquarion's franchise territory into Stratham and the transfer of assets and property rights from WWHA to Aquarion is in the public good as the DES has ordered these actions as necessary as "the most feasible and cost-effective option to address the Water System's arsenic and low water quantity issues" (DES Order at 9), and pursuant to DES's statutory authority of RSA Chapter 485. Therefore, Aquarion requests that the Commission grant this franchise expansion.

C. REQUEST FOR APPROVAL OF ACQUISITION OF ASSETS

12. RSA 374:30 requires Commission approval for the transfer and sale of the franchise, works, or system of an existing public utility as follows:

374:30 Other Public Utility Leases, Etc. Any public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state, ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise

13. The Supreme Court has stated that RSA 374:30 requires that "all sales or transfers of regulated public utility property must be approved by the PUC after a finding that the sales are for the public good." *Appeal of Verizon New England, Inc.*, 153 N.H. 50, 62 (2005) citing *Appeal of Public Serv. Co. of N.H.*, 124 N.H. 479, 483 (1984). Although WWHHA is not a public utility under RSA 362:2, in this matter the transfer of assets from WWHHA to Aquarion is at the direction of the DES Order that also requires Aquarion to receive approval from the Commission. Furthermore, to the extent it might be necessary for the Commission's determination under RSA 374:30, this transaction is in the public good as it enables the fulfillment of the objectives of RSA Chapter 485 and the execution of the DES Order terms.

14. Attachment E is the ATA entered into by Aquarion and WWHHA that is comprised of the transfer of the delivery portion of WWHHA's water system; the provision of necessary land rights; the installation of residential water meters at each customer location; accounting for the impacts and costs of the Tax Cuts and Jobs Act of 2017; and party responsibility for costs of the transaction. To ensure that Aquarion receives clear title to the Water Distribution System Assets, free of claims and encumbrances, every WWHHA member-owner shall execute a "Joinder" prior to the Closing, evidencing their consent to the terms of the ATA and transfer of Assets to Aquarion, see Attachment F.³

15. RSA 485:4, II requires that, "any order issued under this paragraph shall not delegate any costs associated with a connection to the person receiving the order from the

³ The Joinder is necessary to ensure that Aquarion obtains full legal title to the WWHHA assets being acquired, free of claims and encumbrances WWHHA subdivision. The Joinder eliminates any uncertainties regarding title to the water distribution system assets that could potentially arise from gaps in documenting ownership of said assets as between WWHHA and its nonprofit predecessor entities.

department.” Therefore, the terms of the ATA are crafted to ensure that neither Aquarion or its existing customers bear any costs of the transaction entailed by the DES Order’s mandate.

D. REQUEST FOR APPLICATION OF EXISTING AQUARION TARIFF RATE TO WWHHA CUSTOMERS

16. Aquarion requests that its existing tariff be applied to the new customers that will be obtained under this transaction. As noted above, the one-time costs of this transaction are being borne by WWHHA and not by Aquarion. Thus, it is fair, reasonable, and in the public interest that the proposed WWHHA Aquarion customers be subject to the same approved rates, terms and conditions currently approved for Aquarion.

E. EFFECTIVE DATE OF TRANSACTION

17. The DES Order mandates that Aquarion receive Commission approval of this transaction. Receipt of final Commission approval of the requests made in this Petition is a condition precedent to the effectiveness of the ATA.

18. The ATA also includes other conditions precedent to closing set forth in ATA Sections 5 and 6.

19. The “Closing Date” for the ATA is defined in Paragraph 1.4:

[O]n the first business day after a period of thirty (30) days following the date on which all of the “Closing Conditions” set forth in Section 5.1 have either been satisfied or expressly waived by the Party for whose benefit such condition exists (other than conditions which, by their nature, are to be satisfied at Closing, but subject to the satisfaction or written waiver by Aquarion of those conditions), or on such other date or at such other place as the parties may mutually agree upon.

20. Until the Closing Date occurs, Aquarion will continue to provide water to WWHHA on a temporary basis.

WHEREFORE, Aquarion Water Company of New Hampshire, Inc. respectfully requests that the Commission implement the DES Order by granting the following relief:

1. Approve the Asset Transfer Agreement between Aquarion and WWHA, pursuant to RSA 374:30;
2. Authorize and approve Aquarion's franchise expansion into a portion of the Town of Stratham to provide permanent service to WWHA pursuant to the DES Order; and
3. Approve the application of Aquarion's then-existing tariff to the customers obtained by this transaction; and
4. Approve any and all other relief as may be just and reasonable under these circumstances.

Respectfully submitted by:

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

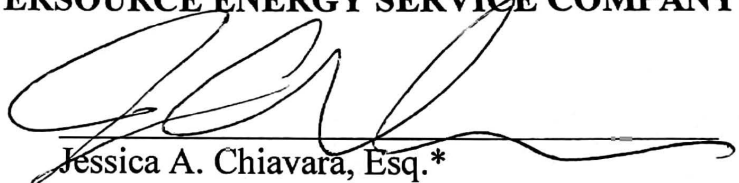
By its counsel

EVERSOURCE ENERGY SERVICE COMPANY

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*not admitted in N.H. Practicing per the authority of NH Supreme Court Rule 42, XI (e), NH Rules of Professional Conduct Rule 5.5 (d)(1), and Rule Puc 203.16.