

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Aquarion Water Company of New Hampshire

Petition for Franchise Expansion, Acquisition of Assets and Application of Existing Rates

Docket No. DW 21 – 093

NORTH HAMPTON’S PETITION TO INTERVENE

NOW COMES the Town of North Hampton (“North Hampton”), by and through NH Water Law and petitions to intervene in this proceeding pursuant to RSA 541-A:32 as follows:

I. PETITION TO INTERVENE

1. RSA 541-A:32, I provides for intervention in a proceeding when “the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law”. North Hampton requests intervention as a full party in this proceeding but will coordinate with the Town of Hampton as it has done in prior proceedings.

2. The North Hampton Select Board is authorized by statute to “manage the prudential affairs of the town and perform the duties by law prescribed.” RSA 41:8. The North Hampton Board of Water Commissioners represents the interests of the Town of North Hampton and its residents related to its water supply. Cf. RSA 38:18; RSA 41:2. Both the Select Board and its Water Commissioners request intervention in this proceeding to represent the prudential interests of the Town, its residents and the Town’s interests as a public fire protection customer.

3. According to the schedules submitted in DW 20 – 184, public fire protection customers pay a total of \$849,320 per year in public fire protection charges to maintain capacity

in Aquarion’s water system for fire protection.¹ Aquarion has proposed to increase public fire protection charges by some 33.3% to a total of \$1,131,877 per year.² North Hampton’s fire protection charges are proposed to increase to \$340,706 per year.³ These charges directly and substantially impact the financial interests of the Town of North Hampton and its residents.

4. As a result, North Hampton is entitled to intervene in this proceeding which will directly impact its substantial interests in rates that are just and reasonable.

II. RESPONSE TO QUESTIONS PRESENTED BY THE COMMISSION.

5. On March 1, 2021, concerned that service to the Wiggin Way system would result in a change in rates and an “undue or unreasonable preference or advantage” to Wiggin Way customers contrary to RSA 378:10, the Town of North Hampton requested that the Commission require hold a hearing and review the proposed rates as required by RSA 378:7.

6. The Commission’s May 10, 2021 Order of Notice states on Page 1 that Aquarion has requested “application of Aquarion’s existing tariffed rates” to the Wiggin Way system. However, Aquarion is currently charging its approved seasonal rates, despite the fact that the Wiggin Way system is not a seasonal system.

7. The Commission’s May 10, 2021 Order of Notice therefore requested that the parties address the following issues:

[A] whether consideration of the future rate impact of a franchise expansion upon a water utility’s current customers is contemplated under RSA 374:22 and RSA 374:26; **[B]** whether current customers who are not residents of the proposed franchise expansion service area have standing, under RSA 541-A:32, I; **[C]** whether rate schedules required during full rate proceedings, under N.H. Admin. R., Part Puc 1600, are required to be filed in connection with a franchise expansion request under RSA 374:22 and RSA 374:26; **[D]** whether application of a different but existing tariff rate, such as changing from seasonal rates charged during an emergency connection to permanent rates, represents a change in rate

¹ DW 20 – 184, Testimony of John F. Guastella, Schedule 17.

² Id.

³ Id.

contemplated by RSA 378:7; and **[E]** whether a franchise expansion request, pursuant to RSA 374:22 and RSA 374:26, and the implementation of existing tariffed rates in connection with the proposed franchise expansion, require detailed examination of possible rate subsidization or preference, under RSA 378:10.
(letters in bold added)

8. North Hampton incorporates by reference its March 1, 2021 *Request for Hearing* and the *Joint Statement of Position* filed by the Town of Hampton on July 23, 2021 and provides the following response to each of the questions identified by the Commission:

A. Whether Consideration of the Future Rate Impact of a Franchise Expansion upon a Water Utility’s Current Customers is Contemplated under RSA 374:22 and RSA 374:26.

The answer to this question is “Yes” although the level of review required in each case depends on the circumstances. For example, in a proceeding where an existing public utility (with an existing approved rate that is just and reasonable) is acquired by another and the acquiring utility charges existing rates, very little review may be required. However, that is not the facts of this case: Aquarion is proposing to acquire a deficient system unable to serve its own needs which was added on an emergency basis.

Aquarion’s existing rate structure includes several different charges which must be read and understood together. These include public fire protection charges to its host municipalities that Aquarion has proposed in DW 20 – 184 to increase to \$1.3 million dollars per year to maintain capacity in the system for fire-fighting. However, the proposed franchise expansion for Wiggin Way includes no charges or adjustment for the supply capacity it will take away from public fire protection customers like North Hampton and Hampton. The proposed expansion

does not follow the provisions of Aquarion’s own Tariff concerning main extensions or conversion of seasonal connections to permanent ones.⁴

The statutes governing utility franchise expansion, RSA 374:22, RSA 374:26 and RSA 374:30, should be read together in context and as a whole to understand their application to this case. *Appeal of Algonquin Gas Transmission, LLC*, 170 N.H. 763, 770 (2018) (“We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. Id. Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole.”); *Appeal of Town of Lincoln*, 172 N.H. 244, 248 (2019) (same). It is helpful to consider RSA 374:30 first because it provides that the standard to be applied by the Commission in considering a franchise is whether the proposed expansion is “in the public good”. It states:

374:30 Other Public Utility Leases, Etc. –

I. 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, or contract for the operation of its works and system 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* The commission may, by general order, authorize a public utility to transfer to another public utility a part interest in poles and their appurtenances for the purpose of joint use by such public utilities.

In numerous proceedings, the Commission has reviewed the sufficiency of existing rates to serve proposed customers when considering a franchise expansion. For example, in Order No.

⁴ See e.g. Tariff, Page 8, Para 40. In cases where “anticipated revenues are insufficient to cover all operating expenses and to support the investment required to extend or install mains” – then a “Refundable Extension Agreement” and a “Refundable Extension Deposit Agreement” which covers the costs to serve those customers; see also Tariff, Page 10, Para 42 (“... Where installation costs are excessive, a cost sharing Agreement with the customers connected to the proposed replacement shall become effective subject to approval of the Public Utilities Commission.”); Page 10, Para 44 (“... At the request of a customer or customer group, the Company will replace an existing customer-owned line (seasonal or underground) providing the customer or customer group pays to the Company the required construction cost, in accordance with the provisions of Section 40g(3)(4)(5)(6)(7).”).

26,301, *Hampstead Area Water Company* (October 22, 2019), the Commission considered a franchise expansion in which the utility initially provided service “on an emergency basis” and thereafter sought to expand its franchise and “charge the Company's existing consolidated rate to the proposed area”. In approving the proposed expansion, the Commission found that the utility’s “application of consolidated rates to Tisdale's owner is just and reasonable” (Page 6).

In another case, in Order No. 25,086, *Pennichuck East Utility* (March 29, 2010), the Commission found the public good test was met because the evidence showed that the proposed existing “rates will cover WVC's revenue requirement and Staff agrees.” Page 5. There are numerous other examples wherein the Commission considered the sufficiency of existing rates in approving a franchise expansion. See e.g. Order No. 24,595, *Pennichuck East Utility* (March 3, 2006) (commission reviewed whether existing rates were just and reasonable for new development in Exeter); Order No. 24,299, *Hampstead Area Water Company*, (March 26, 2004) (“This rate allows HAWC to recover the operation and maintenance expenses associated with maintaining this water system until such time as it files for a new rate.”).

This proceeding is more than a franchise expansion. Aquarion is proposing to change from one rate class (seasonal rates) to another (permanent rates). This triggers rate review under RSA 378:7. The change is not the result of a change by the customer such as change from residential use to commercial or industrial use. It is a change in rates initiated by the utility for the same use. Such a change requires review as to whether the new rate is “just and reasonable” (RSA 378:7) or one that results in subsidy (RSA 378:10).

If it were otherwise, an acquiring utility could purchase an existing utility and charge its existing rates without review. The prohibition against unreasonable rates and subsidies apply to all customer rates and customer classes at all times. As set forth in North Hampton’s March 1,

2021 Request for Hearing and in Hampton’s Joint Statement, there are serious questions as to whether the public good standard can be met without taking into account the costs to serve these customers without a subsidy. These changes need to be addressed under the standards provided by RSA 378:7 and RSA 378:10.

B. Whether Current Customers Who are Not Residents of the Proposed Franchise Expansion Service Area Have Standing Under RSA 541-A:32, I.

Yes. RSA 541-A:32 provides that the Commission “shall” grant a petition for intervention in cases where: “[t]he petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding....” The statute does not require proof in advance of what the impact may be. It only requires a showing that substantial interests such as the Towns’ payment of substantial fire protection charges “may” be affected.

The standard for intervention in this proceeding has been met. As noted in herein and in North Hampton’s *Request for a Hearing* and in the *Joint Statement of Position*, North Hampton and Hampton pay substantial charges to maintain supply for public fire protection. However, the proposed expansion to serve the Wiggin Way system includes no adjustment or mechanism to account for the taking of that supply capacity paid for by the Towns. The public fire protection charges are substantial and have been proposed to increase to \$1.3 million per year. In addition, there is no information on the potential upgrades that may be needed and how those costs would be paid from the limited customer revenues for the expansion. No evidence is presented that would allow the Commission to conclude whether the existing rates to a small number of customers would be reasonable or otherwise.

The standards for intervention under RSA 541-A:32 are not absolute proof. North Hampton and Hampton only need show that their substantial interest “may” be effected. The acquisition may reduce available supply and thereby increase costs of fire protection which are already substantial. There may be other costs imposed to upgrade the Wiggin Way system that are unknown but would directly impact the revenue requirement. Under these and other circumstances, this is clearly a proceeding that will impact both Hampton and North Hampton’s substantial interests in just and reasonable rates.

C. Whether Rate Schedules Required During Full Rate Proceedings ... are Required ... in Connection with a Franchise Expansion Request.

Ordinarily a franchise expansion does not involve a change in rates. However, as set forth in Section A, above, the “public good” standard requires consideration of whether use of an existing rate is sufficient to cover the costs to provide service or would result in unreasonable rates or subsidy. No information has been provided.

As set forth herein, Aquarion is proposing to change from one rate class to another. This triggers the requirement to provide information required by the Puc 1600 rules. Of course, the Puc 1600 rules are subject to waiver in appropriate cases and all of the information that would be required for a full rate case need not be submitted in every case. However, the key point is that there must be sufficient information to demonstrate that the rate is just and reasonable and will not result in undue subsidy. RSA 378:7 & 10.

D Whether Application of a Different but Existing Tariff Rate, such as Changing from Seasonal Rates Charged During an Emergency Connection to Permanent Rates, Represents a Change in Rate Contemplated by RSA 378:7.

Yes. If a utility could change from one existing rate to another without approval by the Commission, then an acquiring utility could charge customers its different or higher rates without any review by the Commission. RSA 378:7 gives an acquiring utility a choice to either maintain existing rates, or, initiate a rate proceeding by providing the information required for a full rate case (subject to waiver, if any). In this case, Aquarion obtained approval to charge seasonal rates. Having now realized that seasonal rates are not sufficient, it has asked to change rates. This requires review under RSA 378:7.

This same issue appears to have arisen in Order No. 26,301 in which it is reported that Hampstead Area Water Company, under circumstances similar to this case, switched from one rate, a wholesale contract approved by the Commission, to its approved rate for 2 inch meters. In response, the Commission “admonish[ed] HAWC ... for not seeking Commission approval of an amendment to its special contract” notwithstanding the fact that the 2 inch rate it charged customers had previously been approved by the Commission. This case is exactly on point. The change from the wholesale seasonal rate to the existing permanent rate represents a change from one rate to another which requires a hearing and a finding that the rate is just and reasonable under RSA 378:7.

Even when the Commission is required to make a determination under the “public good” standard, this requires a finding that the proposed rates will cover the revenue requirement. Order No. 25,086, *Pennichuck East Utility*, *supra*, Page 5. Again, there is no evidence in the

application that would support any determination or notice to customers as to what such a rate should be.

E. Whether a Franchise Expansion Request ... and the Implementation of Existing Tariffed Rates ... Require Detailed Examination of Possible Rate Subsidization or Preference, under RSA 378:10.

Under the circumstances of this case, yes. As explained above, this franchise expansion will result in significant subsidies due to the taking of supply availability developed as a result of substantial public fire protection charges, currently nearly one million dollars per year. It appears that existing revenues are not sufficient to cover the costs to provide service and required upgrades for this system are unknown. RSA 378:7 requires a finding that a change from one rate class to another will result in rates that are just and reasonable which, by law, means one that will not result in undue preference or advantage to one class of customers over another. The level of “detail” that may be required is a question to be answered in response to a waiver request under the Puc 1600 rules. It is not suggested that the level of detail required be unreasonable or that this Commission would act unreasonably in its review.

WHEREFORE North Hampton requests that the Commission:

- A. Grant North Hampton’s intervention in this proceeding as a full party pursuant to RSA 541-A:32;
- B. Order that Aquarion provide information to support its request to change rates as required by RSA 378:7 and Puc 1600, subject to waivers that the Commission may grant; and
- C. Grant such other relief as justice may require.

Respectfully submitted,

TOWN OF NORTH HAMPTON

By its Counsel,

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Dated: July 26, 2021

CERTIFICATE OF SERVICE

I certify that a complete copy of the foregoing is being sent this day to all persons on the Commission's official service list for this proceeding.



Justin C. Richardson, Esq.