

THE STATE OF NEW HAMPSHIRE
before the
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

**JOINT PARTY OBJECTION TO MOTION FOR DEADLINE TO SUBMIT
MEMORANDA AND/OR PRE-FILED TESTIMONY OF HAMPTON AND NORTH
HAMPTON**

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07 and RSA chapter 541-A, Aquarion Water Company of New Hampshire (“Aquarion” or the “Company”), the New Hampshire Department of Energy (“DOE”), and the Wiggin Way Homeowners Association (“Wiggin Way”) (collectively the “Objecting Parties”) hereby object to the October 29, 2021 motion for deadline to submit memoranda and/or pre-filed testimony (“Motion”) of the Towns of Hampton and North Hampton (collectively the “Towns”) in the above-captioned docket. In their Motion, the Towns request that the New Hampshire Public Utilities Commission (“Commission”) order any party who wishes to argue or testify in front of the Commission in the hearing for this matter to present any such argument or testimony in writing 20 days in advance of the hearing. (Motion at 1). Ordering such a requirement would be contrary to Puc 203.06, would frustrate the provisions and purpose of RSA Chapter 541-A and would introduce due process problems for all parties. Accordingly, the Commission should deny the Towns’ Motion. In support of its objection, the Objecting Parties state the following:

1. The matter for consideration in this docket is whether the Commission should grant Aquarion a franchise expansion into the Town of Stratham sufficient to include Wiggin Way so that the Company may fulfill the mandate of the New Hampshire Department of

Environmental Services' ("DES") Administrative Order No. 17-006 WD dated March 29, 2017 ("DES Order"). All requirements of the DES Order have been met by the Company at this time except for the transfer of Wiggin Way's assets necessary to individually meter the customers of Wiggin Way as required by the Company's tariff for all of its customers, and the Commission's approval of the franchise expansion.

2. On October 18, 2021 the Commission issued a procedural order directing the parties to this docket file a recommended procedural schedule for Commission approval, or, if such a schedule could not be assented to by all parties, that each party file a proposed procedural schedule for Commission consideration. On October 29, 2021 Aquarion, DOE and Wiggin Way jointly filed a proposed procedural schedule recommending certain hearing dates and that this matter go directly to hearing, as this will allow for the full and complete adjudication of all open issues in this matter without impairing administrative efficiency or creating undue delay or interference of the resolution of this matter.

3. Also on October 29, 2021, the Towns filed the Motion. The Motion agrees to the recommended hearing dates proposed by all other parties but also asks "that the Commission direct that any party desiring to present argument or witness testimony at the hearing do so in writing 20 days prior to the hearing" and states that doing so is necessary in this case where a franchise expansion requires a finding of public good, and because "[s]ignificant issues remain unresolved which should be identified and described prior to the hearing on the merits." (Motion at 1-2). The Objecting Parties oppose a requirement of advance written filings of any and all arguments to be made at hearing, and also disagree that significant issues have yet to be identified in this matter, and respectfully request the Commission deny the Motion.

4. Testimony is not required in the instant case, nor most other matters brought to the Commission by way of petition. Puc 203.06(a) states “[e]xcept as noted in (c) below, a petitioner shall not be required to submit pre-filed written testimony with a petition.”¹ What’s more, nothing in the Administrative Procedure Act in RSA 541-A, or the Puc 200 rules articulating the process for administrative proceedings, requires that any arguments or testimony to be made in front of the Commission at hearing be filed in writing prior to that hearing. In fact, limiting any arguments by requiring all parties to file pre-hearing written submissions could frustrate due process by unnecessarily and impermissibly limiting: the ability of parties to present their positions; the ability of the Commissioners to ask questions of the parties at hearing; and the ability of any party to conduct cross examination on any other party.

5. Conversely, no party’s due process nor any issue in this proceeding will be limited at hearing in any way should the Towns’ Motion be denied. Should the Commission deny the Motion, the parties will still be able to make any argument they believe reasonable and appropriate at hearing. Parties can offer witnesses to speak to any exhibits on any fact at issue in the matter, and any legal argument can be offered in a closing statement. No argument or issue is precluded at hearing by proceeding directly to hearing without prior mandated written submissions by the parties. The opposite will be true, however, if the Towns’ motion is granted: in light of the Towns’ request, any party that does not offer a particular argument in writing in advance of hearing could be precluded from using it at hearing either in direct or cross examination, in direct violation of due process. Since no statute or rule mandates written submissions by parties prior to hearing, there is no rationale or justification for implementing such a restriction on due process in this or any other adjudicative matter.

¹ Puc rule 203.06(c) only requires pre-filed testimony and exhibits in cases where the petitioner seeks a rate adjustment, which is not being sought here.

6. Despite the above, to the extent that any argument is offered as a pre-hearing written submission, any party submitting either testimony or any other offer of proof as to a fact in dispute must also have a witness to testify to the fact or facts put forward and have that witness available for cross examination. Put another way, while every argument to be made by any party is not and should not be required to be in writing prior to hearing, any written testimony or other submission offered by a party prior to hearing must have a witness sworn in at hearing to speak to and be cross examined on the offered facts in dispute.

7. While there is no basis for the Commission to grant the Towns' request for the reasons stated above, the Objecting Parties also object to the Towns' assertion that certain unresolved issues need to be identified and discussed prior to hearing. As stated previously in multiple Company filings in this docket, the DES Order explicitly requires Aquarion to make the current temporary interconnection serving Wiggin Way permanent, and to obtain permission from the Commission for a franchise expansion to do so. To accomplish the required permanent interconnection and serve these customers consistent with the Company's tariff, it is necessary for Aquarion to expand its existing franchise into the Town of Stratham and acquire certain existing water distribution infrastructure assets already in place so that the Company may individually meter the Wiggin Way customers.

8. The Company's petition for a franchise expansion and application of Aquarion's existing rate only raises two issues: whether such an expansion would be for the public good, and whether the rate to be applied is just and reasonable. The former has already explicitly been found by DES in its Order, and no additional factual inquiry or legal argument can negate that public good finding. As for the latter, there is no dispute that Aquarion's existing tariffed rate is just and reasonable, as the Commission has already made such a finding when it approved the

rate in Docket No. DW 12-085, the last Aquarion rate case, and as it has likewise made a just and reasonable finding each time it has adjusted that rate in a WICA proceeding since that last rate case. The Commission orders to which the Towns cite in their Motion hold exactly that: that a company's existing tariffed rate is just and reasonable as it has been previously deemed so by the Commission.²

9. Additionally, a public good finding is not contingent upon a consideration of some rate other than Aquarion's existing tariff rates as the Towns contend. Therefore, an inquiry or discussion as to the cost or provision of fire protection service is not necessary for a finding of a public good, nor could that inquiry negate the DES's unappealable finding that a public good exists. In any event, the petitioner has met its burden: Aquarion in its petition has provided conclusive evidence that the franchise expansion is in the public good and that Aquarion's existing rate is just and reasonable. As to the open or "unresolved" issues, the Company need not submit anything further in advance of hearing, as its original petition filing contains the whole of the Company's case, and the hearing itself is the proper forum for resolving open issues. The Company should be able to proceed directly to hearing and present its witnesses and arguments without any further conditions precedent.

10. For these reasons, the Objecting Parties recommend the Towns' Motion be denied, as the Motion if approved would be contrary to the applicable statutes and Commission rules, while denying the Motion will have no procedural or substantive impact on any party to this matter.

² Order No. 24,595 at 4; Order No. 25,086 at 3; Order No. 26,301 at 5.

WHEREFORE, Aquarion respectfully requests that the Commission:

- (1) Deny the Towns' motion deadline to submit memoranda and/or pre-filed testimony; and
- (2) Order such further relief as may be just and equitable.

Respectfully submitted,

Aquarion Water Company of New Hampshire, Inc.

Date: November 5, 2021

By: 

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

Date: November 5, 2021

A handwritten signature in black ink, appearing to read 'J.A. Chiavara', written in a cursive style.

Jessica A. Chiavara