

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 09-193

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

Petition for Approval to Issue Promissory Note

Order *Nisi* Approving Petition

ORDER NO. 25,072

February 1, 2010

I. BACKGROUND

Aquarion Water Company of New Hampshire, Inc. (Aquarion) is a regulated water utility pursuant to RSA 362:2 and 362:4 and serves approximately 8,770 customers in Hampton, North Hampton, and Rye. On October 9, 2009, Aquarion filed a petition for authority to issue a promissory note. Aquarion seeks to borrow up to \$4 million from an affiliate, Aquarion Company, Inc., over a five-year term, on an unsecured basis, at a fixed interest rate of 4.62%. Aquarion Company, Inc. is the immediate parent of Aquarion Water Company, Inc. which in turn is the immediate parent of Aquarion Water Company of New Hampshire, Inc. The petition was accompanied by financial schedules, proposed loan documents, and the testimony of Donald J. Smiarowski, Manager of Treasury and Risk at Aquarion Water Company of Connecticut, another affiliate of Aquarion. Mr. Smiarowski is responsible for treasury matters for each of Aquarion Water Company's regulated subsidiaries.

Aquarion is operating under a temporary waiver of the short-term debt limit of 10% of net fixed assets delineated in N.H. Code Admin. Rules Puc 608.05. *Aquarion Water Company of New Hampshire, Inc.*, Order No. 24,959, Docket No. DW 09-045 (April 22, 2009). The Commission authorized Aquarion to carry short-term debt in an amount up to 20% of its net

fixed plant until March 31, 2010. Specifically, in Order No. 24,959 the Commission stated, “we also agree that regardless of the quality of the short term debt, Aquarion’s waiver should not last beyond the end of the first quarter of 2010. In that time, Aquarion ought to be able to arrange long term debt financing.” Therefore, the Company’s filing here is in compliance with a Commission directive.

Mr. Smiarowski states that the proceeds of the financing will be used to refinance Aquarion’s existing short-term debt thereby reducing its short-term debt from 16.85% to 1.18% of its net fixed plant. Mr. Smiarowski states that all of the improvements that were financed by the existing short-term debt, including the \$1.5 million Mill Road standpipe project, are in service and are already included in its rate base as result of Aquarion’s recent rate case. Order No. 25,019, *Aquarion Water Company of New Hampshire Intent to File Rate Schedules* (Sept. 25, 2009).

The loan will not amortize and the entire amount will be payable at maturity. Interest will be payable semi-annually in arrears. Aquarion sought longer term financing but because an existing short-term credit facility between Aquarion Holdings, Inc. and Dresdner Bank prohibits Aquarion from providing a security interest in its assets, Aquarion was unable to obtain an unsecured loan on a term greater than five years. Rather than risk losing this short-term debt facility, which would be harmful to the company and its customers, Aquarion opted to borrow from an affiliate at a rate that was lower than what it could obtain from CoBank and Bank of America. The proposed financing would increase the percentage of total debt to total capitalization from 51.7% to 60.9%. Aquarion’s Board of Directors approved the terms of the proposed financing.

On November 10, 2009, Staff recommended that the Commission approve Aquarion's financing request. Staff stated that Aquarion's proposal to borrow from an affiliate at an interest rate of 4.62% is very favorable given Aquarion's need to reduce the level of its short-term debt. Because of the low interest rate and minimal issuance costs, Staff stated that the overall impact of this financing on customers will be minimal.

On November 16, 2009, the Office of the Consumer Advocate (OCA) filed a letter requesting that the Commission obtain additional information regarding the use of the short-term debt before ruling on Aquarion's petition. OCA also requested that the Commission require Aquarion to provide its customers with notice of the pending request and, subsequent to such notice, provide Aquarion's customers with the opportunity to be heard. OCA stated that Aquarion's petition and testimony do not provide adequate information as to the use of the short-term funds to be replaced with long-term debt, indicating that while Aquarion cites capital improvements as to the use of the funds, the company only identifies one specific capital project. OCA stated Staff's recommendation letter provides no additional information about the specific uses of the short-term debt and that, therefore, the Commission lacks sufficient information on which to base a decision.

On November 25, 2009, Staff responded to OCA's request. Staff stated that it believed that the Commission has adequate information on which to base a decision. Staff stated that Aquarion has expended about \$1.8 million annually on capital improvements in the last three years and that, given the vagaries of cash flows in a utility, there cannot be a direct match between a utility's short-term debt level and its current capital spending.

II. COMMISSION ANALYSIS

Pursuant to RSA 369:1, public utilities engaged in business in this State may issue evidence of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be “consistent with the public good.” Analysis of the public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates to ensure the public good is protected. *See Appeal of Easton*, 125 N.H. 205, 211 (1984).

In compliance with Commission Order No. 24,959 in Docket No. DW 09-045, Aquarion seeks to borrow up to \$4 million from its affiliate to refinance existing short-term debt. The proposed loan is for a five-year term, is unsecured, and is at an annual interest rate of 4.62%. Aquarion will pay interest only on a semi-annual basis in arrears as the proposed loan is not amortizing. Aquarion will use the proceeds of the loan to retire existing short-term debt and thus reduce its balance of short-term debt to a level below the ceiling of 10% of net fixed assets as established in N.H. Code Admin. Rules Puc 608.05.

The capital assets funded through the short-term debt are already in rate base. Staff states that because the issuance costs are negligible and the interest rate is low that the overall impact of the financing on customers will be minimal in any future rate case. Thus, Staff recommends approval of the financing.

The OCA has requested that we seek additional information on the specific uses of the short-term debt being refinanced; however, we agree with Staff that we have adequate information on which to base a decision, in that the financing was undertaken in compliance with the Commission’s directive in Order No. 24,959. Furthermore, the proposed financing will have no discernable impact on rates or deleterious effect on Aquarion’s capitalization. We consider

the proposed use of the funds to retire short-term debt as a legitimate and routine use of funds in a long-term debt issue. Additionally, in this case, the capital additions that were fully or partly funded with short-term debt have already been reviewed and approved in Aquarion's recent rate case and are now in rate base.

We therefore find the proposed financing and uses of the funds to be consistent with the public good and will approve the amount and purpose of the financing. This approval is given on the condition that the final terms are not substantially different from those proposed in Aquarion's filing and that if such terms vary significantly, we will require Aquarion to seek additional Commission approval.

As for notice to customers requested by OCA, we will issue this order on a *nisi* basis to afford interested parties notice and an opportunity to be heard.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, authority to undertake the financing proposed by Aquarion, upon the terms and conditions proposed in its petition is hereby **APPROVED**; and it is

FURTHER ORDERED, that Aquarion, no later than February 10, 2010 shall cause a copy of this Order *Nisi* to be published once in those newspapers with circulation in those portions of the state where operations are conducted; and it is

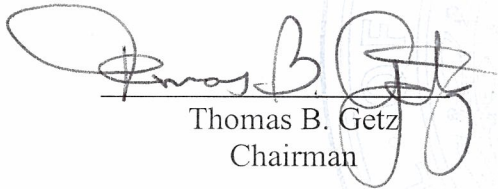
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than February 17, 2010 for the Commission's consideration; and it is


FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 24, 2010; and it is


FURTHER ORDERED, that this Order *Nisi* shall be effective March 1, 2010, 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 true copies of the loan documents executed or otherwise finally issued in connection with the closing of the transactions contemplated hereby.

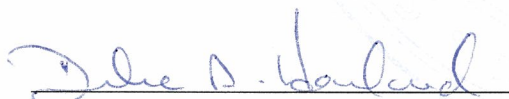
By order of the Public Utilities Commission of New Hampshire this first day of February, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

STEVEN V CAMERINO
MCLANE LAW FIRM
11 SOUTH MAIN ST STE 500
CONCORD NH 03301

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FILING INSTRUCTIONS: **PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**
WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:
DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429