

RETURN DATE: DECEMBER 3, 2013

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|-----------------------------|---|-------------------|
| OFFICE OF CONSUMER COUNSEL, | : | SUPERIOR COURT    |
| BY AND THROUGH              | : |                   |
| CONSUMER COUNSEL            | : | JUDICIAL DISTRICT |
| ELIN SWANSON KATZ           | : | OF NEW BRITAIN    |
|                             | : |                   |
| Appellant                   | : |                   |
|                             | : |                   |
| V.                          | : |                   |
|                             | : |                   |
| PUBLIC UTILITIES REGULATORY | : |                   |
| AUTHORITY AND               | : |                   |
| AQUARION WATER COMPANY OF   | : |                   |
| CONNECTICUT                 | : |                   |
|                             | : |                   |
| Respondents                 | : | NOVEMBER 4, 2013  |

**PETITION FOR ADMINISTRATIVE APPEAL**

TO THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF NEW BRITAIN  
ON THIS FOURTH DAY OF NOVEMBER, 2013, COMES THE OFFICE OF  
CONSUMER COUNSEL, BY AND THROUGH CONSUMER COUNSEL ELIN  
SWANSON KATZ, APPEALING PURSUANT TO SECTIONS 16-35 AND 4-183  
OF THE CONNECTICUT GENERAL STATUTES FROM A FINAL DECISION OF  
THE PUBLIC UTILITIES REGULATORY AUTHORITY AND COMPLAINS AND  
SAYS:

## INTRODUCTION

1. This is an appeal by the Office of Consumer Counsel (“OCC”), by and through Consumer Counsel Elin Swanson Katz, from a final decision (“Decision”) of the Public Utilities Regulatory Authority (“PURA” or “Authority”) dated September 24, 2013 and mailed on September 25, 2013 in a proceeding PURA designated as Docket No. 13-02-20, Application of Aquarion Water Company of Connecticut to Amend its Rates.

2. The appellant, OCC, is an agency of the State of Connecticut, designated as the statutory advocate for Connecticut ratepayers in utility matters pursuant to CONN. GEN. STAT. § 16-2a.

3. OCC was a party to PURA Docket No. 13-02-20.

4. The respondent, PURA, is an agency of the State of Connecticut, charged by statute with the regulation of public service companies and the establishment of their rates.

5. The respondent, Aquarion Water Company of Connecticut (“Aquarion” or “Company”), is a public service company providing water utility service in certain areas of Connecticut.

6. Aquarion filed an application for rate amendments with PURA on March 28, 2013, whereupon PURA opened Docket No. 13-02-20, a rate case and a contested case for purposes of the Uniform Administrative Procedure Act, Conn. Gen. Stat. § 4-166, et seq.

7. Aquarion was a party to PURA Docket No. 13-02-20.

### **BACKGROUND TO THE DECISION**

8. The Decision establishes several rate amendments for Aquarion water utility service.

9. On pages 74-116 of the Decision, PURA analyzes one aspect of rate-setting for Aquarion, which is the rate of return on invested capital. In this section, PURA established Aquarion's return on equity ("ROE").

10. On pages 111-15 of the Decision, PURA analyzes a particular issue impacting the ROE determination, being whether Aquarion should receive a premium rate of return pursuant to Section 8 of Public Act 13-78.

11. Section 8 of Public Act 13-78 repealed existing CONN. GEN. STAT. § 16-262s, and replaced it with the following language:

**(a) (1)** In the case of a proposed acquisition of a water company that is not economically viable, as determined by the Public Utilities Regulatory Authority in accordance with the criteria

provided in subsection (b) of section 16-262n, by a water company that is economically viable, as determined by the authority in accordance with said criteria, upon petition of the acquiring water company and after notice and hearing, the authority may allow the acquiring water company to implement, and revise quarterly thereafter, a rate surcharge applied to the rates of the acquired water company or of both the acquiring water company and the acquired water company, as determined by the authority, that would recover on a current basis those costs of such acquisition, including a reasonable acquisition premium, and of needed improvements to the acquired water company's system, to the extent the authority deems such costs appropriate. The regulations adopted by the authority pursuant to section 16-262o shall apply for purposes of this section.

(2) The Public Utilities Regulatory Authority may allow the recovery of such reasonable acquisition premium when it is demonstrated that such proposed acquisition shall provide benefits to customers by (A) enhancing system viability, or (B) avoiding capital costs or savings in operating costs, or as otherwise determined by the authority. If an acquisition premium is authorized, the excess of the acquisition cost over the depreciated original cost shall be added to the rate base to be amortized as an addition to expenses over a reasonable period of time with corresponding reductions in the rate base.

(b) In the case of a proposed acquisition of a water company that is not economically viable, as determined by the Public Utilities Regulatory Authority in accordance with the criteria provided in subsection (b) of section 16-262n, by a water company that is economically viable, as determined by the authority in accordance with said criteria, the authority may, as part of the acquiring water company's next general rate case, award a premium rate of return to such acquiring water company when it is demonstrated that such proposed

acquisition will provide benefits to customers by (1) enhancing system viability, or (2) avoiding capital costs or saving in operating costs, or as otherwise determined by the authority.

(c) In lieu of all or part of a rate surcharge, the authority may allow the acquiring water company to defer such costs of such acquisition for subsequent collection as part of its next general rate case.

The additions made by Public Act 13-78 to CONN. GEN. STAT. §16-262s are underlined.

12. Subsection (b) of Section 8 of Public Act 13-78 authorizes PURA to award a premium rate of return to an economically viable water company that previously acquired a water company which is not economically viable, provided that in the proceeding regarding the proposed acquisition: (i) PURA made such determination of viability (for the acquiring company) and of non-viability (for the acquired company) pursuant to criteria in CONN. GEN. STAT. § 16-262n(b); and (ii) PURA made a determination that the acquisition provides certain benefits to consumers.

13. CONN. GEN. STAT. § 16-262n(b) provides that

(b) The Public Utilities Regulatory Authority, in consultation with the Department of Public Health and the Department of Energy and Environmental Protection, may review the economic viability of a water company, except a municipal

water company, based upon performance measures of the company's stability and financial condition, technical and managerial expertise and efficiency, and physical condition and capacity of plant. The Public Utilities Regulatory Authority shall make recommendations for improvement or provide counseling to a reviewed water company to assist in improving the company's economic viability.

14. On pages 114-15 of the Decision, the Authority, citing Public Act 13-78, granted Aquarion a 50 basis point (0.50%) premium rate of return for acquiring non-viable water systems. The systems identified by PURA as non-viable were United Water, Rural Water and Brookfield Water, each of which was acquired by Aquarion through previous PURA proceedings, as set forth below.

15. In an August 22, 2012 Decision in Docket No. 12-03-08, PURA and DPH Review of Joint Application of Aquarion Water Company of Connecticut, United Water Works, Inc. and United Water Connecticut ("United Water Acquisition Decision), PURA approved the acquisition of United Water by Aquarion. PURA did not make a determination in the United Water Acquisition Decision that United Water was not economically viable using the criteria of § 16-262n(b). In fact, Aquarion purchased United Water at a premium, not at a discount reflecting economic distress.

16. In a December 28, 2011 Decision in Docket No. 11-06-17, DPUC and DPH Joint Review of the Application of the Rural Water, Company, Inc. for

Aquarion Water Company of Connecticut to Acquire the Assets of the Rural Water Company, Inc. (“Rural Water Acquisition Decision”), PURA approved the acquisition by Aquarion of Rural Water’s assets. PURA did not make a determination that Rural Water was not economically viable using the criteria of §16-262n(b). In fact, Aquarion purchased the assets of Rural Water at a premium, not at a discount reflecting economic distress.

17. In a December 14, 2011 Decision in Docket No. 11-06-07, DPUC and DPH Joint Proceeding Regarding the Application of the Aquarion Water Company of Connecticut and the Brookfield Water Company, Inc. for Aquarion Water Company of Connecticut to Acquire the Assets of the Brookfield Water Company, PURA approved the acquisition by Aquarion of Brookfield Water’s assets. PURA did not make a determination that Brookfield Water was not economically viable using the criteria of § 16-262n(b). In fact, Aquarion purchased the assets of Brookfield Water at a premium, not at a discount reflecting economic distress.

18. PURA never made a factual determination, using the criteria of § 16-262n(b), that any of United Water, Rural Water, or Brookfield Water was not economically viable when they were acquired by Aquarion.

**THE ERROR COMPLAINED OF**

19. The Decision violates Connecticut law by granting a premium rate of return to Aquarion, purportedly pursuant to Section 8 of Public Act 13-78, without ever having made the prior, required determination under said provision that any of the acquired water companies was not economically viable, using the criteria of §16-262n(b), at the time of their acquisition by Aquarion.

20. The ratepayers of Aquarion represented by OCC will suffer millions of dollars in economic losses if this illegal aspect of the Decision is not corrected.

**CONCLUSION**

21. For all the foregoing reasons, the Authority's Decision is:

- a) in violation of a statutory provision,
- b) in excess of the Department's statutory authority,
- c) clearly erroneous in view of the reliable probative and substantial evidence on the whole record, and
- d) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

22. OCC has exhausted all administrative remedies and is aggrieved by the Decision of the Authority.

WHEREFORE, the Appellant, Office of Consumer Counsel, requests that this Court provide for the following relief:



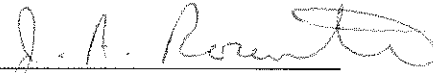
- (i) Grant this appeal and determine that the Decision of the Authority to allow Aquarion a premium rate of return is based on an illegal and erroneous application of Public Act 13-78; and
- (ii) Grant such other relief in law or equity as is required or appropriate.

Dated at New Britain, Connecticut, this 4th day of November, 2013.

Appellant,

OFFICE OF CONSUMER COUNSEL

ELIN SWANSON KATZ  
CONSUMER COUNSEL

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