

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
C.A. No. 2013-3159-BLS2**

TOWN OF HINGHAM

v.

**AQUARION WATER COMPANY OF
MASSACHUSETTS, INC., and
AQUARION WATER CAPITAL OF
MASSACHUSETTS, INC.**

MEMORANDUM OF DECISION ON FINAL JUDGMENT

This case involves interpretation of an 1879 Charter for purposes of arriving at the proper purchase price for a water company. The parties were unable to agree on an appropriate formula for calculating the purchase price the Town would be required to pay under the language of the Charter. Following a bench trial, the court ruled on the issues presented by way of its Memorandum and Order of Findings and Rulings dated November 20, 2015 (Findings and Rulings). Docket, Paper 27.

The court ordered that the parties “cooperate to submit a Proposed Final Judgment with respect to the appropriate purchase price for the assets of Aquarion Mass. and Aquarion Capital in whatever detail they deem appropriate, but consistent with these Findings and Rulings, no later than forty-five (45) days from [November 20 2015].” *Id.*, at pages 31-32. The parties apparently attempted to comply with the court’s order, but ultimately (once again) could not agree on, *inter alia*: interpretation of the court’s rulings; calculation of “net plant;” calculation of debt; and general fairness under the water charter precedent.

Accordingly, a new flurry of pleadings has been generated, and issue was finally joined

Notice Sent 4.25.16

-Mwiz
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March 2, 2016. Docket, Papers 28-36. The alternative purchase prices offered by the parties in their initial post-trial pleadings ranged from \$51,758,082, to \$191,880,000. Paper 27, at page 31. The newly-proposed alternative purchase prices now range from \$49,938,304, to \$144,292,856 (Papers 29-30) – a bit of progress, perhaps.¹ Following thorough review of these new pleadings, the court rules as follows.

1. Those portions of the Findings and Rulings at pages 23-24, and page 32 are to be read in harmony. That is, assumption of debt should be excluded from the price calculation; but so should interest on debt. Accordingly, the “net plant” calculation must account for excluding interest on debt. Or, in the words of the Defendants, the court’s Findings and Rulings require a “downward adjustment” to the price. I do not, however, view this to be an adjustment “from the Net Plant Formula set forth in previous decisions,” as characterized by Defendants, but rather a necessary component of the net plant calculation of actual cost based on the particular facts of this case.

2. “Adjustment for interest on debt” shall mean that interest actually paid to bondholders should be deducted from the statutory formula purchase price using the “net plant formula” -- with net plant being the original cost less depreciation, with a 10% annual return, less dividends.

3. The basis for the calculation shall include the material available from Trial Exhibit 65 as previously stipulated by the parties, as that material has recently been supplemented by the document entitled Second Stipulation of Financial Assumptions, dated January 19, 2016. I have also considered the expert affidavits of Dixon and Jenkins submitted by both sides since the Findings and Rulings, dated January 19, 2016, and February 1 and February 2, 2016, respectively.

¹ All figures are as of December 31, 2013. There is no purchase date because there is has been no Town vote to purchase.


4. Based on the supplemented record before me, I agree with Defendants that only the “interest on debt” actually paid to bondholders is to be deducted in the formula to reach a purchase price. I further agree with Defendants that interpreting “interest on debt” to be that interest actually paid is consistent with the purpose of the statute, the parties’ advocacy throughout the litigation, and common sense.

5. For all of the reasons argued by the Town, I decline to add to the net plant formula interest on restricted cash and CWIP. Nor will I include in the calculation Defendants’ late entry for “costs associated with a sale to the Town.”

6. Accordingly, Final Judgment shall enter for \$88,585,821.00 as the calculated purchase price required under the Charter, as of December 31, 2013.

SO ORDERED.

Dated: April 22, 2016



Christine M. Roach

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R. Chitt

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CIVIL ACTION NO. SUCV2013-
03159-BLS2**

TOWN OF HINGHAM,)
Plaintiff,)
v.)
AQUARION WATER COMPANY)
OF MASSACHUSETTS, INC. and)
AQUARION WATER CAPITAL)
OF MASSACHUSETTS, INC.)
Defendants.)

*Motion Allowed for purposes
of Accounting Calculating
Final Judgment in
accordance with the
Court's findings and
Rulings of Nov. 20, 2015.
Robert Rosen, J.
4/22/2016*

SUFFOLK SUPERIOR COURT
CIVIL
2016 FEB -5 PM 1:45
CLERK/MAGISTRATE

**TOWN OF HINGHAM'S MOTION TO SUPPLEMENT RECORD
AND REQUEST FOR HEARING**

*↑ Denied, Roach, J.
after: Richard V. Muscato, Jr. asks den*

The plaintiff Town of Hingham (the "Town") hereby moves this Court to supplement the trial record with the undisputed financial records of defendants. This motion is necessitated because although defendants stipulated to summaries from their financial records being used for trial (Exhibit 65), and stipulated to summaries from their financial records being used for the post-trial motions, defendants have now taken the position that since the underlying complete financial records are not contained in the trial record, there is a defect of some nature in the record that arises to an appellate issue.

The Town relies on this motion and the concurrently served and filed supporting memorandum and affidavit of Kerry T. Ryan.

THE TOWN REQUESTS A HEARING ON ITS MOTION.

Notice Sent 4.25.16

- MW:Z	- TBN:R
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

TOWN OF HINGHAM,

Plaintiff,

vs.

AQUARION WATER COMPANY
OF MASSACHUSETTS, INC., and
AQUARION WATER CAPITAL
OF MASSACHUSETTS, INC.,

Defendants

*Motion Allowed for purposes of
 accurately calculating
 Final Judgment in accordance
 with the Court's findings and
 rulings of November 20, 2015.*

SUPERIOR COURT
 CIVIL ACTION NO. SUCV2013-
 03159-BLS2

W. James Joseph, J.
4/22/2016

AQUARION'S MOTION TO CONDITIONALLY SUPPLEMENT THE RECORD

The Defendants, Aquarion Water Company of Massachusetts, Inc. ("Aquarion Mass") and Aquarion Water Capital of Massachusetts, Inc. ("Aquarion Capital") (collectively, "Aquarion"), hereby move the Court to conditionally supplement the record to include evidence that documents (i) the interest paid to bond holders, and (ii) the additional costs of the proposed purchase of the Hingham Water System by the Town of Hingham (the "Town"). These amounts are detailed in the Affidavits of Troy Michael Dixon and discussed in Aquarion's Memorandum in Support of its Motion for Entry of Final Judgment and for Clarification of the Court's November 20, 2015 Memorandum, all of which were previously filed with the Court.

Aquarion seeks to have its Motion allowed *only if* the Court grants the Town's Motion to Supplement the Record or considers entering judgment for the Town based upon any purchase price calculation that deducts "interest on debt" from Net Plant.

Notice Sent 4.25.16

-MW:Z	-TBH:R
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2016 MAR -2 PM 3:30
 SUPERIOR COURT
 CIVIL ACTION NO. SUCV2013-03159-BLS2

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COMMONWEALTH OF MASSACHUSETTS

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4/22/2016
Kusur, J.

SUFFOLK, ss.)
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TOWN OF HINGHAM,)
Plaintiff,)
)
vs.)
)
AQUARION WATER COMPANY)
OF MASSACHUSETTS, INC., and)
AQUARION WATER CAPITAL)
OF MASSACHUSETTS, INC.,)
Defendants)

SUPERIOR COURT
CIVIL ACTION NO. SUCV2013-03159-BLS2

SUFFOLK SUPERIOR COURT
CIVIL ACTION NO. SUCV2013-03159-BLS2
2016 FEB -5 PM 4:20
MIDDLESEX COUNTY CLERK/MAGISTRATE

AQUARION'S REQUEST FOR HEARING

Quinn Johnson

Pursuant to Superior Court Rule 9A(c)(2), Aquarion Water Company of Massachusetts, Inc. ("Aquarion Mass") and Aquarion Water Capital of Massachusetts, Inc. ("Aquarion Capital") (collectively "Aquarion" or "Company") hereby requests a hearing on their *Motion for Entry of Final Judgment and for Clarification of the Court's November 20, 2015 Memorandum* on the grounds that oral argument will assist the Court in its resolution of the issues presented.

Respectfully submitted:

January 19, 2016

Notice sent 4.25.16

MWIZ
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RC

AQUARION WATER COMPANY OF MASSACHUSETTS, INC., and AQUARION WATER CAPITAL OF MASSACHUSETTS, INC.,
Defendants
By its attorneys,

Fred A. Kelly, Jr.
Fred A. Kelly, Jr. BBO# 544046
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(866) 947-1649 (f)
fkelly@nixonpeabody.com

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COMMONWEALTH OF MASSACHUSETTS

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Suffolk Superior Court
9/10/17
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SUFFOLK, ss.)
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TOWN OF HINGHAM,)
Plaintiff,)
)
vs.)
)
AQUARION WATER COMPANY)
OF MASSACHUSETTS, INC., and)
AQUARION WATER CAPITAL)
OF MASSACHUSETTS, INC.,)
Defendants)

SUPERIOR COURT
CIVIL ACTION NO. SUCV2013-
03159-BLS2

2016 MAR -2 PM 3:33
SUPERIOR COURT
CIVIL ACTION

AQUARION'S REQUEST FOR HEARING

Pursuant to Superior Court Rule 9A(c)(2), Aquarion Water Company of Massachusetts, Inc. ("Aquarion Mass") and Aquarion Water Capital of Massachusetts, Inc. ("Aquarion Capital") (collectively "Aquarion" or "Company") hereby requests a hearing on their *Motion to Conditionally Supplement the Record* on the grounds that oral argument will assist the Court in its resolution of the issues presented.

Dated: March 2, 2016

Respectfully submitted:

Notice Sent 4-25-16

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RC

AQUARION WATER COMPANY OF
MASSACHUSETTS, INC., and AQUARION
WATER CAPITAL OF MASSACHUSETTS,
INC.,
Defendants
By its attorneys,

Fred A. Kelly, Jr.
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NOTIFY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.)

TOWN OF HINGHAM,)

Plaintiff,)

vs.)

AQUARION WATER COMPANY)
OF MASSACHUSETTS, INC., and)
AQUARION WATER CAPITAL)
OF MASSACHUSETTS, INC.,)

Defendants)

SUPERIOR COURT
CIVIL ACTION NO. SUCV2013-
03159-BLS2

*Motion Allowed in part
And DENIED in part.*

Don Rivas, J.

4/22/2016

2016 FEB -5
SUFFOLK SUPERIOR COURT
CLERK OF COURT

AQUARION'S MOTION FOR ENTRY OF FINAL JUDGMENT AND FOR CLARIFICATION OF THE COURT'S NOVEMBER 20, 2015 MEMORANDUM

Aquarion Water Company of Massachusetts, Inc. ("Aquarion Mass") and Aquarion Water Capital of Massachusetts, Inc. ("Aquarion Capital") (collectively "Aquarion" or "Company"), hereby file this Motion for Entry of Final Judgment and for Clarification ("Motion") regarding the Court's Memorandum and Order of Findings and Rulings ("Memorandum") dated November 20, 2015.

Despite the parties' best efforts to cooperate on the calculation of the purchase price under the 1879 Charter, the meaning of one aspect of the Court's conclusion requires clarification: "I accept, however, [the Town of Hingham's ("Town")] argument with respect to interest on debt, and rule that any such interest should be excluded from the price calculations." (Id. at p. 24.) In accordance with the Court's Memorandum, the parties have met to discuss the calculation and amount of a final judgment, but have been unable to agree on either, due to their differing interpretations of the Court's finding concerning "interest on debt." Based on the

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. SUCV2013-
03159-BLS2

TOWN OF HINGHAM,)
Plaintiff,	
v.	
AQUARION WATER COMPANY	
OF MASSACHUSETTS, INC. and	
AQUARION WATER CAPITAL	
OF MASSACHUSETTS, INC.	
Defendants.	

Motion for hearing Denied.

Motion for judgment Allowed in part and Denied in part.

[Signature]

Robert J.

4/22/2016

2016 FEB -5 PM 1:40
 SUFFOLK SUPERIOR COURT
 CLERK/HABISIRATE

TOWN OF HINGHAM'S MOTION FOR ENTRY OF FINAL JUDGMENT AND REQUEST FOR HEARING

The plaintiff Town of Hingham (the "Town") hereby moves this Court for entry of final judgment pursuant to the Court's November 20, 2015, Memorandum and Order of Findings and Rulings. The Town relies on this Motion and the concurrently served and filed Proposed Judgment, Affidavit of Carl Jenkins Regarding the Purchase Price Calculation According to the Memorandum and Order of Findings and Rulings dated November 20, 2015, and the Second Stipulation of Financial Assumptions with Exhibits agreed upon between the parties.

THE TOWN REQUESTS A HEARING ON ITS MOTION.

Notice Sent 4.25.16

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• NP - FAK	- MSF

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