

CONSUMER ADVOCATE
D. Maurice Kreis

ASSISTANT CONSUMER ADVOCATE
Pradip K. Chattopadhyay

STATE OF NEW HAMPSHIRE



TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

OFFICE OF THE CONSUMER ADVOCATE
21 S. Fruit St., Suite 18
Concord, N.H. 03301-2429

Website:
www.oca.nh.gov

July 15, 2019

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

NHPUC 15 JUL '19 PM 12:12

Re: Docket No. DW 17-165
Abenaki Water Company, Rosebrook Water System
Staff Recommendation of July 15, 2019

Dear Ms. Howland:

Please treat this letter as the response of the Office of the Consumer Advocate (OCA) to the July 15, 2019 filing by Commission Staff in the above-referenced rate case proceeding, which concerns the Rosebrook Water System of Abenaki Water Company (Abenaki). The Staff filing recommends that the Commission (1) authorize Abenaki to proceed to contract with Horizons Engineering, Inc. (Horizons) "to create the necessary engineering designs to resolve the significant water pressure condition at Rosebrook," and (2) establish March 31, 2020 as the date for Abenaki to submit its filing for the Step 2 rate adjustment approved by the Commission in this docket via Order No. 26,205 (December 27, 2018). The two are related because, according to the Settlement Agreement (Exh. 9) approved in Order No. 26,205, the purpose of the Step 2 rate adjustment is to allow for recovery of up to \$100,000 in costs associated with the engineering designs to be developed by Horizons.

When considering the Staff recommendation, the Commission should keep in mind that this is very much a contested case. Although the OCA joined Staff and Abenaki in signing the Settlement Agreement approved in Order No. 26,205, the bulk of this utility's customers (in both numerical and volumetric terms) objected. Specifically, Omni Mount Washington LLC (owner of the landmark hotel that accounts for more than half of this utility's volumetric sales) and the Bretton Woods Property Owners Association (which represents roughly 85 percent of the utility's residential customers) objected to the Settlement terms.

The Commission should also keep in mind that the OCA signed the Settlement Agreement for two reasons. First, our analysis indicated that the Settlement Agreement reasonably resolved the

basic revenue requirements issues – particularly questions related to the Rosebrook Water System’s return on equity and pro forma capital structure – that were in dispute. Second, we deemed it reasonable in the circumstances to defer for future resolution questions related to how this utility would resolve the chronic overpressurization issues that have bedeviled the Rosebrook Water System since well before Abenaki acquired the system. The mechanism for kicking that particular can down the road is the so-called Step 2 rate adjustment. According to the Settlement Agreement, the Step 2 adjustment will cover the cost to Abenaki of having an outside firm, Horizons Engineering, Inc. (Horizons) develop “*proposed* engineering designs no later than September 30, 2019” with rate recovery limited to a maximum of \$100,000. *See* Exh. 9 at 9, ¶ D(3) (emphasis added).

The OCA recognizes that overpressurization is a serious problem for the Rosebrook Water System and that, as noted by Staff, Abenaki was directed by the Department of Environmental Services (via a June 7, 2019 Sanitary Survey Report, on file in this docket) to submit a corrective action plan within 30 days. However, the Commission should not proceed as the Staff letter recommends.

There is no basis under the Commission’s enabling statutes, regulations, or prior orders in this proceeding for the Commission to authorize Abenaki to contract with an engineering firm to plan necessary capital improvements. It is, rather, the utility’s statutory responsibility to “furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.” RSA 374:1. Explicit Commission authorization would imply a prudence determination, which is neither contemplated by the Settlement Agreement nor consistent with applicable law.

According to the Settlement Agreement, the signatories agreed “to litigate the scope of the engineering design in the present docket.” Exh. 9 at 10. We agreed to this provision based on the assumption that all of the parties to this proceeding, including the hotel and the property owners’ association, would be able to agree on the right approach to addressing the overpressurization problem. There has been extensive contact among the parties and Staff since that time. Agreement has proven to be elusive.

Therefore, in our judgment, the Commission should abandon efforts to resolve the “scope” issues in this docket. Instead, the Commission should (1) adopt Staff’s recommendation to defer the deadline for the utility’s Step 2 filing to March 31, 2020, (2) remind the utility that it is responsible for making prudent investment decisions, subject to after-the-fact review by the Commission, and (3) reaffirm that the Commission will, as necessary, consider the prudence of the expenditures covered by the Step 2 filing (relative to engineering design services) only when that filing is received. *See* Order No. 26,205 at 10 (“we are not required at this time to determine if Step II is just and reasonable”). The Commission should not, as Staff recommends, explicitly authorize Abenaki to contract with Horizons.

Our position should not be understood as an effort to minimize the sense of urgency expressed on June 7 by the Department of Environmental Services in its Sanitary Survey. To the extent this is a crisis, *it is of the utility’s own making*. Thus it should not become the pretext for

allowing the utility to evade scrutiny of the prudence of how and when it addresses the overpressurization problem and any other issues related to the provision of service to customers.

Thank you for considering our views.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Maurice Kreis". The signature is fluid and cursive, with a long horizontal stroke at the end.

D. Maurice Kreis
Consumer Advocate

cc: Service List, via e-mail