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July 25, 2019

NHPUC 26 JUL '19 AM 10:32

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

**Re: Docket No. DW 17-165, Abenaki Water Company, Inc.
Rosebrook Water System--Step II Rate Adjustment
Response to Staff Recommendation**

Dear Ms. Howland:

Please treat this letter as Omni Mount Washington, LLC's (Omni) response in the above-captioned proceeding. Enclosed are an original and six copies pursuant to Puc 203.02 and electronic copies have been filed with the New Hampshire Public Utilities Commission (PUC or Commission) and the Consumer Advocate.

On July 15, 2019, Commission Staff filed a recommendation in the above-captioned proceeding that is highly problematic in a number of regards. Of particular note, Omni agrees with the Consumer Advocate, Mr. Kreis, that the Commission should not "authorize" Abenaki Water Company, Inc. (Abenaki) to "proceed with contracting Horizons Engineering, Inc. (Horizons) to create engineering designs," inasmuch as Abenaki could have and should have already proceeded down that path on its own volition. In addition, Omni disagrees with certain characterizations recounted at p.6 of the Staff Recommendation, i.e., the unsupported and incorrect notions advanced by Abenaki that the Easter Sunday water main break at the Mount Washington Hotel was caused by high water pressure and that it occurred in a service line. See Omni's July 24, 2019 Complaint for a full discussion of the water main break.

Staff recommends that the Commission do three things, namely, (1) authorize Abenaki to contract with Horizons, (2) require Abenaki to submit periodic reports regarding its efforts to obtain low cost financing from the New Hampshire Department of Environmental Services (DES), and (3) approve March 31, 2020, as the deadline for Abenaki to make its Step II filing. As explained more fully below, Omni disagrees with the first, agrees with the second as far as it goes, and disagrees with the third.

While Omni appreciates Staff's effort to break the impasse that has developed with respect to Step II, Abenaki does not need authorization to contract with Horizons. Rather, if

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Abenaki hopes to demonstrate to the Commission that it has developed the “best and most cost effective solution” as set forth in Order No. 26,205 (December 27, 2018) then it would seem logical that Abenaki would proceed with the engineering effort that would help make its case. Instead of taking the steps necessary to satisfy the Commission’s condition for the Step II rate increase, however, Abenaki has sought the parties’ concurrence on the “scope” of its engineering plans. See, for example, the May 10, 2019 Letter provided as Attachment A. Omni can only surmise that Abenaki is reluctant to engage Horizons until it procures some assurance that it will recover the costs as part of the Step II rate increase, which is inconsistent with the approach adopted by the Commission.

Omni responded to Abenaki’s May 10, 2019 request, that it could not concur with the “scope” of Abenaki’s so-called engineering plans, pointing out that, at best, Abenaki was proposing a conceptual, phased approach, which has changed in critical respects over the past year. Further, Omni indicated that Abenaki had yet to provide sufficient detail for Omni, or the Commission for that matter, to make an informed judgment as to whether Abenaki’s proposal is the “best and most cost effective solution” to addressing high water pressure in the Rosebrook system, or otherwise providing reliable service at reasonable rates. In addition, Omni noted that there has been a fundamental problem in the use of terms throughout this case, most notably, the “scope of engineering.” Abenaki’s use of the term has been at a very high and general level that is incompatible with determining whether Abenaki has developed the “best and most cost effective solution,” which is the equivalent of a prudence review or an *Easton* review.

As for periodic reporting of Abenaki’s efforts to procure low cost financing, Omni agrees that Abenaki should be pursuing such options and ultimately Abenaki should be held accountable for taking all prudent measures to ensure reasonable financing costs and rates to customers. Staff’s recommendation, however, does not address Abenaki’s efforts, or lack thereof, to obtain grant funding from the Drinking Water and Ground Water Trust Fund. In its April 8, 2019 Reconciliation filing, Abenaki indicated that it would pursue such funding and that the deadline for application was June 15, 2019. See Attachment B. Omni discussed this issue with Abenaki and Omni indicated that it would provide whatever assistance it could. To the best of Omni’s knowledge, however, Abenaki took no concrete actions to prepare an application.

With respect to the filing deadline for Step II, Staff concludes that the September 30, 2019 deadline for Abenaki to file its Step II request may no longer be viable. Staff recommends a deadline of March 31, 2020, while Abenaki proposes a deadline of December 31, 2019. To the extent that the September 30, 2019 deadline is no longer viable it is because Abenaki has not proceeded with contracting Horizons to create the necessary engineering designs. Omni therefore opposes altering the deadline set forth in Order No. 26,205 at p. 10.

Omni agrees with Staff that Abenaki cannot make its case until Horizons (or some entity, including Abenaki) has developed the final engineering designs but that does not excuse Abenaki from getting on with the engineering effort. The Commission has set up a process that grants Abenaki the extraordinary relief of recovering engineering costs related to a project that will not become used and useful for a year or more through a step increase, which is typically reserved to avoid regulatory lag with respect to a utility’s ability to earn a return on large capital projects that

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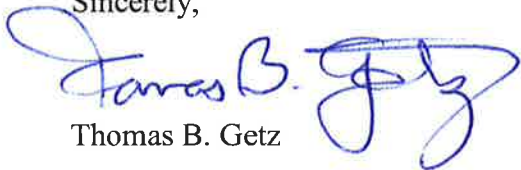
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go into service following a rate proceeding. See Docket No. DW 01-081, Pennichuck Water Works, Inc., Order No. 23,923 (March 1, 2002) at 13. Thus, it is reasonable that Abenaki should be required to satisfy a stringent test in order to qualify for the atypical step increase contemplated here.

Finally, in its recommendation letter at p. 7, Staff refers to Abenaki's burden of proof and "contends that the results of the discussions with Abenaki regarding alternative solutions...are evidence that the 'scope of the engineering design' has been sufficiently formulated, thus requiring Abenaki to proceed with contracting Horizons for the engineering study." Omni takes this to mean that Staff believes that Abenaki is in a position to, and should, move forward. Correspondingly, Omni does not interpret Staff's position to be contrary to the Commission's finding in Order No. 26,205, that "full cost recovery in any plant investment, especially a \$3 million water tank addition, is not guaranteed and ultimately the investment must be found prudent for such recovery to occur." Omni seeks to clarify that neither Abenaki's contracting with Horizons nor its collection of a step increase for engineering costs should be elevated to, or conflated with, an *Easton* review that would be part of a financing or the ultimate prudence review.

The parties have expended significant time and effort but are deadlocked as to how to proceed. As a means of bringing this matter to a resolution, Omni suggests that a hearing in the nature of oral argument and/or the scheduling of a further technical session/settlement discussion may be productive. In the meantime, Omni is prepared to work with Abenaki and the parties, and reaffirms the position it has taken previously that the parties may be better served by negotiating rather than litigating issues related to the contemplated step increase.

Sincerely,



Thomas B. Getz

TBG:slb