

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 17-165

Abenaki Water Company, Inc. – Rosebrook Division
Permanent Rate Proceeding-Hearing on Rate Case Expenses

WRITTEN CLOSING

1. On December 19, 2019, Omni Mount Washington, LLC (“Omni”) filed a request for the opportunity to respond to Staff’s letter of December 11, 2019. On January 13, 2020, Omni followed up that request with a motion requesting a hearing “for the purpose of determining whether charges by Abenaki Water Company, Inc. (“Abenaki”) to its affiliate, New England Service Company (“NESC”), are recoverable as rate case expenses under Puc 1907.01.” The Commission granted Omni’s motion. It set a hearing for April 23, 2020 and, at that hearing, granted parties leave to file written closings.

2. The right to collect just and reasonable rate case expenses is found in RSA 365:38-a¹, RSA 365:8, X, and Chapter Puc 1900. It is not disputed that Abenaki has no employees, uses an affiliate agreement with NESC for management and labor for Abenaki’s Rosebrook Division, and that the affiliate agreement is on file with the Commission. See Omni motion for hearing at page 4. Omni objects to recovery of the disputed rate case expenses because “if Rosebrook had direct employees who spent time on the rate case, such expenses would clearly not be eligible for recovery and, under the same logic, where Abenaki has decided

¹ **365:38-a Proceeding Costs.** – “The commission may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities... shall be just and reasonable and in the public interest.”

to structure its operations such that NESC provides service to its affiliated water utilities indirectly, rate case expenses should likewise not be recoverable, as distinguished from the salaries of employees already included in rates.” Motion at 4 and 5.

3. The first ‘fact’ Abenaki wishes to dispel is Omni’s belief that employee salaries are in the revenue requirement and that there is double recovery of NESC expenses. Abenaki testified at hearing and submitted evidence that: (1) the NESC personnel keep daily timesheets; (2) although employees may be salaried, their timesheets apportion their daily time among multiple (5) Abenaki divisions at an hourly rate, not at a salaried rate; (3) NESC performed work that was related to management and operation of the water utility and also performed work for the general rate case; (4) timesheet data was recorded to different USOA accounts to reflect these different types of work NESC did; and (5) this basic accounting principle meant that no increment of time was attributed to two accounts so there could be no double booking or double recovery of expenses. This latter fact was true whether the timesheet data was used to calculate the revenue requirement or rate case expenses. Omni, despite having requested the hearing, offered no testimony or evidence to contradict Mr. LaChance.

4. Mr. LaChance also testified that NESC’s rate case work was booked to account 186, a deferred account; and that NESC work related to the general management and administrative duties of the water utility was booked to Administrative & General, account 920. Again, no testimony or evidence contradicting this testimony was offered.

5. Abenaki’s books and records are dictated by the Commission’s Uniform System of Accounts (“USOA”). See RSA 374:8 and Puc 607.07. According to the USOA, Administrative & General expenses are required to be recorded in account 920. See USOA at 141. Expenses that are “not elsewhere provided for” are required to be recorded in account 186,

which is a deferred account. See USOA at 59. Record keeping and compliance with the USOA was fully audited by the Commission's Audit Staff. See Exhibit 16. Audit Staff took no issue with how Abenaki booked rate case expenses. Audit Staff made no Audit Issue finding on this subject. Hearing Exhibit 16, pages 53-89. If Abenaki were booking rate case expenses to the wrong account, that would have been raised in the Audit and it wasn't.

6. Staff agreed with Audit Staff. In testimony and in three separate documents, Staff demonstrated how Abenaki booked its rate case expenses to the correct account and that there was no double booking. See Exhibits 13, 15, and 18. In Exhibit 18, Staff corrected Omni's motion reference to \$87,601 and explained that the NESC administrative management and labor was comprised of \$35,688, not \$87,601 as Omni had stated in its motion for hearing.

7. To put Omni's argument in perspective, \$35,688 minus the disputed NESC expenses of \$26,369, would mean that Abenaki would have only \$9,319 in annual revenues to cover the annual NESC administrative management and labor expenses for this year. As Ms. Descoteau testified, Abenaki's Administrative & General expenses were lower than its contemporary water utilities. Further, Ms. Descoteau testified that if Abenaki could not recover the NESC expenses, then NESC provided rate case expense work for free.

8. With respect to Omni's policy argument, Abenaki has used its affiliate NESC exactly how it used it for its White Rock and Lakeland rate cases. The Commission approved those rate case expenses. Furthermore, Abenaki is not the only utility who shares an affiliate's employees so as to obtain cost effective personnel. Aquarion Water Company of New Hampshire, Inc. and Hampstead Area Water Company, Inc. have both recovered rate case expenses of affiliates who also performed operational work. This is the precedence Omni seeks to overturn. Because of this precedence and the policy's general applicability to the regulated

public, Omni's suggested change needs to be done with proper notice under RSA 541-A:3 as a rule or under RSA 541-A:9 and 16 as a declaratory ruling, not in this proceeding.

9. The record reflects that Abenaki-Rosebrook's structure is in the public interest. The Commission approved Rosebrook's structure of no employees and reliance on NESC employees in the acquisition docket and in this rate case. Those issues were not appealed. Ms. Descoteau testified that Abenaki's arrangement with NESC produces management and labor costs that are below the costs of similar water utilities. Because the NESC charges are at cost, Abenaki receives a benefit that it might not otherwise obtain in the market. Ms. Descoteau further testified that there was no blanket prohibition on categories of rate case expenses and that recoverability of expenses depended on the facts of the case. She gave as an example, that sometimes outside legal expenses could be recoverable even though the utility had in-house counsel. Here, the facts warrant a finding that the NESC rate case expenses are recoverable.

10. Arguments made at hearing attacking this arrangement contain flaws. The argument that the NESC charges equated to high salaries overlooks the fact Mr. LaChance testified to: the NESC costs, although at cost, include all benefit and overhead costs. Therefore, they cannot simply be compared to a salary stripped of all overhead. The argument that percent rate increases among the NESC invoices is higher than inflation overlooks that NESC issues quarterly true-ups so that the projected hourly rates billed in that quarter reflect the actual costs NESC incurred to provide those services.

11. Lastly, because the Commission's approval of Rosebrook's structure of no employees and reliance on contracted work was never appealed, *res judicata* applies. To reopen this issue would impose significant financial harm on Abenaki given that its revenue requirement has been set.

12. Abenaki filed for recovery of its expenses a year ago. The hearing was Omni's fourth opportunity to add facts to its argument. It is notable that Omni did not present any evidence to support its contention of double recovery. The record instead supports that: (1) NESC provided expert services for the preparation and presentation of the Rosebrook rate case; (2) that the services were at cost and trued up quarterly; (3) NESC rate case expenses were approved in Abenaki's other rate cases; (4) NESC's rate case hours were tracked and booked in a deferred account in compliance with the USOA; and (5) the NESC expenses were not already included in Rosebrook's revenue requirement. Abenaki apologizes for not filing rate case reports but notes that this oversight has not prejudiced the parties' ability to review and opine on the expenses. Furthermore, the Chapter Puc 1900 rules do not prohibit recovery in light of that oversight. In conclusion, the record supports that the NESC charges are just and reasonable and in the public interest. Abenaki respectfully requests the Commission approve recovery of the NESC expenses using the existing recovery method.

Respectfully submitted,

Abenaki Water Company, Inc.

By its Attorney,
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Dated: April 30, 2020

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Certificate of Service

I hereby certify that a copy of the foregoing objection has been emailed this day to the docket-related service list.

Dated: April 30, 2020

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