

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**DOCKET NO. DW 17-165
ABENAKI WATER COMPANY, INC.--ROSEBROOK**

**OMNI MOUNT WASHINGTON, LLC
SUMMATION—RATE CASE EXPENSES**

Abenaki's argument to be separately compensated for the work performed on the rate case by employees of its affiliate, New England Service Company ("Service Company"), focuses on the point that the rate case expenses for which it seeks recovery are not included in the revenue requirement. Omni Mount Washington, LLC ("Omni") does not dispute that point. In fact, it should be the case for Abenaki and every other utility that rate case expenses are not included in the revenue requirement. Abenaki's argument is a red herring, a false trail that distracts from the real issue.

Rate case expenses are one kind of non-recurring expense and they are excluded from the calculation of a utility's revenue requirement as a matter of course. It is obvious, therefore, that the work performed by employees of the Abenaki Service Company on the rate case would not, and should not, be included in Abenaki's revenue requirement.

The fundamental principle reflected in Puc Chapter 1900 is that a utility may not recover expenses for work performed by employees on a rate case if their services are already included in the utility's revenue requirement, which is the case here. See Puc 1903.06, defining Service Provider, and Puc 1907.01 (a) and (b) concerning Expenses Not Allowed. The Commission's rules, moreover, make no distinction between employees who perform work directly for a utility and employees who perform work for the utility through an affiliated service company. The crucial distinction the rules make is between those individuals whose services are in the revenue requirement and those whose services are not.

Ms. Descoteau acknowledged at the hearing on April 23, 2020, that salaries for the services of NESC employees are included in Abenaki's revenue requirement, which should effectively end the inquiry. See also Ms. Descoteau's Letter, December 11, 2019 at p. 5. She nevertheless offered during her direct testimony the unsound theory that the dollar value of the administrative and general salaries included in the revenue requirement provides a basis for recovery.

It is not relevant or determinative, however, that the dollar amount included in the revenue requirement for salaries is less than the salary of any particular employee, as Ms. Descoteau suggests. The dollar amount included in the revenue requirement for the Rosebrook Division merely reflects the nature of the corporate structure chosen by Abenaki, and the fact that the Service Company employees perform work for several utilities and their services are allocated among and paid from rates those utilities collect from customers.

Ms. Descoteau's theory supporting recovery misses the whole point of the service company structure. It is understandable, as suggested by Mr. Vaughan, that Abenaki may be too small to have its own complement of employees, and that it is more efficient and cost effective to have a pool of employees available in the Service Company to provide services to several utility affiliates. But that structure does not insulate Abenaki from the fundamental principle that a utility may not also recover rate case expenses for work performed by employees whose services are already included in the revenue requirement.

It is clear, on the other hand, that the Commission's rules allow for the recovery of rate case expenses in special circumstances. For example, a utility may recover the actual expenses of an expert consultant or lawyer, if the work they perform is germane and reasonable, and their services are not included in the utility's revenue requirement. Accordingly, putting aside the

issue of Abenaki's non-compliance with Puc 1905, the expenses of *bona fide* Service Providers, such as Mr. St Cyr and Ms. Brown, are recoverable.

Charges by the Service Company employees for work on the Abenaki rate case, however, do not fall in the same category as Mr. St Cyr and Ms. Brown. Charges by the Service Company employees are not recoverable because the services of those employees are already included in Abenaki's revenue requirement.

Abenaki's focus on accounting, auditing and the affiliate agreement is misplaced in the analysis of recoverability. Those issues are critical in determining the revenue requirement in the first instance, i.e., identifying the costs that should be excluded as non-recurring expenses and the proper level of salaries in the test year that should be included in the revenue requirement. Once those determinations are made, however, the analysis of recoverability is driven by interpreting the rules.

As for the issue of duplicative recovery, it would arise when the salaries/services of employees are already included in the revenue requirement, as is the case here, and then the utility were also allowed to recover for work done on a rate case by those same employees whose services are already included in the revenue requirement, which Abenaki seeks and Staff would permit.

Omni further contends that Abenaki is barred from recovery because it did not comply with the requirements of Puc 1905, Procedures for Filing for Recovery of Rate Case Expenses.

As set forth in Puc 1904.01:

"No utility shall recover from its ratepayers any rate case expense unless such expense has first been found by the commission to be just and reasonable and in the public interest and otherwise conforms to the requirements of Chapter Puc 1900." (Emphasis supplied.)

During her testimony at the hearing on April 23, 2020, Ms. Descoteau indicated that Staff had apparently decided to loosely apply the requirements of Puc 1905 to small water companies, opting to focus on encouraging future compliance. While there may be some merit to such an approach as a transitional matter, Chapter Puc 1900 was made effective November 15, 2013, more than six years ago. Furthermore, it appears that Abenaki was already given leeway by Staff in Docket No. 15-199 for its rate case involving Bow and Belmont customers. In that rate case, Abenaki filed a letter on January 25, 2016 (mistakenly dated January 22, 2015) which reports that Abenaki provided its actual and estimated rate case expenses to Staff and the parties at a technical session on November 19, 2015, four months after filing its rate case.

Abenaki asks the Commission to overlook its non-compliance with Puc 1905.01, arguing that not to overlook it would “constitute an impermissible rule,” citing *Asmussen v. Commissioner*, 145 NH 578, 595 (2000) for support. That case is about the propriety of instructions given by the Assistant Commissioner of Safety to hearing officers about how to conduct administrative license suspension hearings in light of new legislation. The Supreme Court concluded that two of the Assistant Commissioner’s instructions did constitute a rule and one did not.

The facts of *Asmussen* are nothing like the facts here. The pertinent fact here is that the Commission did not address Puc 1905.01 earlier in this proceeding when it issued Order No. 26,295 (October 1, 2019) approving partial recovery of rate case expenses. While Staff hazarded the argument that Omni may have somehow waived the ability to make its position now about Abenaki’s non-compliance (an argument that Omni does not accept), neither Abenaki nor Staff has supplied a basis for the Commission to conclude that it is barred from enforcing its rules. Moreover, it would seem that if the goal is uniform treatment under Puc 1905, then the better

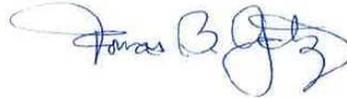
remedy, as opposed to overlooking Abenaki's non-compliance, would be for the Commission to exercise its authority under RSA 356:28 to alter its earlier decision allowing recovery of rate case expenses in Order No. 26,295.

In conclusion, under the Commission's rules Abenaki may not recover as rate case expenses the \$26,369 in charges to the Service Company because the employees of the Service Company get paid to provide services to Abenaki's affiliated utilities and the salaries of Service Company employees are included in, and allocated among, the revenue requirements of the various utilities. Moreover, these expenses are not eligible for recovery in any event because Abenaki failed to comply with the Commission's procedures for filing for recovery of expenses.

Respectfully submitted,

Omni Mount Washington, LLC
By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

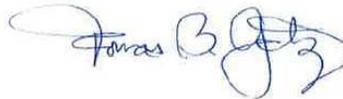


Dated: April 30, 2020

By: _____
Thomas B. Getz, Bar No. 923
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
thomas.getz@mclane.com

Certificate of Service

I hereby certify that on the 30th of April, 2020, an original and six copies of the foregoing Complaint was hand-delivered to the New Hampshire Public Utilities Commission and an electronic copy was served upon the Distribution List.



Thomas B. Getz

