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PUBLIC UTILITIES COMMISSION

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April 30, 2020

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 Division
Request for Change in Rates
Staff’s Closing Arguments Regarding Contested Rate Case Expenses

Dear Executive Director Howland:

Pursuant to a Secretarial Letter issued on April 15, 2020, in the above-mentioned matter, the Commission scheduled a hearing on Omni Mount Washington Hotel, LLC’s (Omni) motion regarding contested rate case expenses and Abenaki Water Company, Inc’s (Abenaki or the Company) motion to extend the Step II filing, for April 23, 2020. Due to time constraints, the Commission only addressed the contested rate case expenses issue at hearing.

Before the Commission adjourned the April 23 hearing, Omni requested the Commission allow the participants, including the Office of the Consumer Advocate (OCA), the Bretton Woods Property Owners Association (BWPOA) and Staff of the New Hampshire Public Utilities Commission (Staff), to file written closing arguments regarding the contested rate case expenses. The Commission granted Omni’s request, and ordered that if the participants chose to file closing arguments, the arguments must be filed within five business days from the hearing, or April 30, 2020.

I. Background

The principle dispute concerns \$26,369 in rate case expenses relating to charges by the Company’s affiliate, New England Service Company (NESC), as requested by Abenaki. On February 11, 2019, the Company resubmitted the corrected version of its rate case expenses pursuant to Order No. 26,205 (December 27, 2018). Abenaki’s filing consisted of 600 pages of documents itemizing charges the Company offered as recoverable rate case expenses. The Company supplemented its rate case expense filing again on May 8 and July 15, 2019, attaching an additional 30 and 38 pages of charges, respectively. After concluding a thorough examination of those filings, Staff submitted its recommendation on August 15, 2019.

In its filing, Staff recommended that the Commission approve \$145,559 in total recovery for the Company. That amount was comprised of \$39,533 in temporary to permanent rate recoupment and \$106,026 in rate case expenses. Within that recommendation, Staff noted that it recommended

disallowance of \$10,941 in rate case expenses, pursuant to N.H. Admin R., Puc 1907.01, as those “items include charges for work related to separating Rosebrook's financial information from that of Abenaki's other water systems, charges which were not adequately supported, and expenditures not germane to the determination of rates in this case.” Staff Recommendation, August 15, 2019, at 2. Abenaki ultimately agreed to Staff’s recommended disallowances in its August 22, 2019 filing.

On September 9, 2019, Omni filed its objection to Staff’s recommendation, disputing the calculation of the \$106,026 in rate case expenses. Specifically, Omni argued that charges to NESC, in the amount of \$26,369, were ineligible for recovery. Omni argued that the charges are impermissible, pursuant to Puc 1907.01(a), which bars recovery for activities that are “typically performed by utility management and staff of the utility.” Omni also argued that NESC did not meet the definition of a service provider, pursuant to Puc 1903.06, which states that a service provider is “any natural person or legal entity who provides expert, consulting, administrative, or legal services to a utility and whose services are not already included in the utility’s revenue requirement.” Omni repeated these arguments during the April 23 hearing.

BWPOA filed its objection on September 11, 2019, and also argued that the NESC expenses should be disallowed, based upon the nature of the affiliate agreement between Abenaki and NESC, and certain compensation rate increases from April to May. BWPOA also repeated these arguments during the April 23 hearing.

In Order No. 26,295, the Commission authorized Abenaki’s recovery of \$79,657 in rate case expenses, ruling that those expenses had been just and reasonable and “prudently incurred.” At 6. The Commission further withheld determination on the remaining \$26,369 in rate case expenses and ordered the Company to address the arguments provided by Omni and BWPOA. Abenaki filed its response on October 15, 2019, citing that there are no employees in Abenaki nor are the NESC charges already in the revenue requirement.

Omni filed a timely motion for rehearing of Order No. 26,295, contesting the allocation of the \$79,657 in rate case expenses. Omni, however, maintained that it did not contest the amount approved. The Commission denied Omni’s motion for rehearing in Order No. 26,312 (November 27, 2019).

On December 11, 2019, Staff filed a report clarifying the admin and general salaries included in Abenaki-Rosebrook’s revenue requirement. Staff indicated that \$35,688 of Abenaki-Rosebrook’s revenue requirement related to NESC management labor, not the \$60,604 originally cited in Audit Staff’s audit, and cited by Omni in its motion for rehearing.

Omni filed a motion in response, on January 13, 2020, arguing again that the rate case expenses should be disallowed and requesting a hearing before the Commission. Omni argued that work performed by NESC is already included in rates, and thus should not be recovering rate case expenses for work completed on the rate case expense as it is prohibited by 1907.01(a) and (b). Omni essentially argued that Abenaki was double-recovering, once in rates and again through rate case expense. Omni again argued that NESC does not meet the definition of a service provider, per Puc 1903.06, as the work done by NESC is already in the revenue requirement.

Omni also argued, for the first time, that the contested rate case expenses should be disallowed because Abenaki did not file estimated rate case expenses, pursuant to Puc 1905.01 (requiring a utility to update the Commission every 90 days during a rate proceeding a detailed description of rate case expenses, list of services rendered by a vendor on behalf of the utility, and total estimated cost for each service).

The hearing followed on April 23, 2020.

II. Closing Argument

The \$26,369 in contested rate case expenses should be approved. The record is replete with evidence and testimony, both from the Company and Staff, on which the Commission can, and should, base its decision to allow Abenaki recovery of these rate case expenses.

During the hearing, the OCA made the argument, echoed by Omni and BWPOA, that the Company had not met its burden to prove that the contested rate case expenses requested were just and reasonable and should be approved by the Commission. Staff, respectfully, disagrees.

The Company met its burden by working in conjunction with Staff, to review their requested rate case expenses. That process is typical of most utility's rate case expense filings, where a utility files its request, which Staff then examines, concluded by a Staff recommendation to the Commission. As the OCA stated at hearing, however, the instant case is atypical, as the utility's largest customer, Omni, and the largest homeowner's association, BWPOA, dispute the recoverability of these charges.

The instant case is also atypical in that the Company made three separate filings related to this docket's rate case expenses, totaling more than 660 detailed pages, an inordinate amount for most rate cases. After submission, Staff performed its usual due diligence and investigation, as proscribed by the Puc. 1900 rules, over the course of several months. Staff individually examined each page and request made by the Company. Staff testified that it carefully reviewed these charges by the standards required in the Puc. 1900 rules. Staff worked in conjunction with the Company by engaging in an investigation to examine the charges, and finally making adjustments pursuant to the Puc. 1900 rules. The filing and review, pursuant to the Puc. 1900 rules, evidences that the burden of putting forward rate case expenses that are just and reasonable has been met.

The culmination of Staff's investigation produced a recommendation filed on August 15, 2019. That filing recommended Commission approval for Abenaki's recovery of more than \$106,000 in rate case expenses, which included these contested amounts. That recommendation also cited disallowances pursuant to Puc 1907.01, in the amount of over \$10,000. Those disallowances are clear evidence that Staff examined the entirety of Abenaki's filing to ensure that the recovery recommended conformed and complied with the Puc 1900 rules. Staff concluded that the rates were just and reasonable and should be approved.

Since the filing of Staff's recommendation, Omni and BWPOA have argued that the charges related to NESC charges should be disallowed. Omni based its objection chiefly on the argument that the charges should be disallowed pursuant to Puc. 1907.01, and that NESC does not meet the definition of service provider, pursuant to Puc. 1903.6. Essentially, Omni argued that Staff did not

adhere to Commission rules in recommending approval of these charges, alleging that Staff somehow misinterpreted the rules. Omni attempted to highlight Staff's misinterpretation of the rules by providing unrelated hypotheticals during the hearing for Staff to examine. Staff, however, continually testified that it did review the NESC charges in consideration of both Puc. 1907.01 and Puc. 1903.06 and determined that the Commission should approve those rate case expenses.

Staff maintained that Puc 1907.01(a) did not prohibit recovery. Both Staff and the Company testified that Abenaki does not have any full time employees. As Abenaki does not have any full time staff, there is no one to typically perform the rate case filings. Staff further testified that Puc 1907.01(b) did not bar recovery as it had verified, after extensive review, that the \$36,688 in the test-year revenue requirement did not include any of the rate case expense charges requested by the Company. Staff, furthermore, even cited the Puc. 1907.01 provision for barring recovery of other expenses, clearly evidencing that Staff considered these very provisions when reviewing the expenses.

Staff also testified that NESC does meet the definition of a service provider pursuant to Puc. 1903.06. Without full time employees, Staff stated, there can be no salaries included in the revenue requirement, and as such, there are no services performed by NESC for the rate case that are also included in Abenaki's revenue requirement.

Staff, furthermore, testified that the \$35,688 in Abenaki-Rosebrook's revenue requirement, representing the NESC management labor, is not a salary, but comprised of individual, discrete utility operation charges within that rate case's filed test year. Staff also testified, for arguments' sake, that had the \$35,688 been a lump-sum salary, it could not be considered a comparable salary for someone at a utility who performs typical utility work, and expected to be responsible for the filing of a rate case.

Omni also argued that Abenaki's failure to file estimated rate case expenses, pursuant to Puc. 1905.01, bars recovery of these rate case expenses. Staff contends that too fails. While Abenaki arguably did not meet this requirement, Omni does not raise any argument, other than failure to submit that paperwork during the course of the rate case, as to why absence of those documents prohibits Staff from vetting the current rate case filings. At this stage, Staff argues that barring recovery because of missed preliminary filings defeats the purpose of rate case expense recovery. Absence of those filings did not prevent Staff from conducting its examination nor recommending the Commission's approval.

Staff, furthermore, argues that Omni has effectively waived this argument as it did not raise it in its motion for rehearing of Order No. 26,295. Omni did not make this claim when the Commission approved over 75 percent of the recommended rate case expenses was approved. Without raising that to the Commission's attention, it should not entertain this matter.

Staff argues that this is merely a situation where despite concluding a thorough investigation, Omni and BWPOA disagree with the outcome in that it increases Abenaki's rates. Mere disagreement with Staff's conclusion based on an undesired outcome should not be grounds for support to deny recovery of these rate case expenses. If Omni and BWPOA were to prevail, furthermore, the work completed by NESC on the rate case would be done essentially for free. As Staff testified, allowing Abenaki to recover these contested rate case expenses does not amount to

double recovery as the Company is not currently collecting for this work, or a salary for an NESC employee, in its rates.

Pursuant to RSA 363:27(II), Staff is organized by the Commission to achieve its statutory responsibilities. Among those statutory responsibilities is fixing just and reasonable rates, pursuant to RSA 378:7, which includes rate case expenses. Staff is “expected to bring their expertise and experience to bear in developing proposals for resolution of issues before the commission.” *Verizon-New Hampshire*, 87 N.H. PUC 11 (2002). As part of its duty, Staff examined these rates thoroughly, and according to the New Hampshire Public Utility Commission’s rules, determining that these contested rate case expenses in particular warrant approval by the Commission. As such, the rate case expenses should be approved.

Sincerely,

/s/ Christopher R. Tuomala

Christopher R. Tuomala, Esq.
Hearings Examiner/Staff Attorney

cc: Service List (electronically)