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October 7, 2020

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: DW 17-165, Abenaki-Rosebrook Division Rate Case
Step II Deadline--NHDES Compliance Update
Omni Response**

Dear Ms. Howland:

On September 18, 2020, Abenaki Water Company, Inc. (“Abenaki”) made a filing labeled “NHDES Compliance Update.” It appears that Abenaki is asking the Commission to consider evidence after the close of the July 16, 2020 hearing, without filing a motion pursuant to Puc 203.30.

The filing consists primarily of email exchanges between Mr. Vaughan from Abenaki and Mr. Suozzo from the Department of Environmental Services (“DES”), which are troubling in a number of regards. Among other things, Mr. Vaughn told Mr. Suozzo that Abenaki could not comply with proposed DES deadlines because the Public Utilities Commission (“PUC” or “Commission”) “holds the purse strings.” In addition, Mr. Vaughn said: “If Abenaki had approval to recover the engineering design costs, we would otherwise be moving forward.”

Mr. Suozzo’s communications extend back to the summer of 2019, at which time he said: “I realize that PUC approval is required for you to proceed with addressing several deficiencies listed, however, our rules require an approved completion date for any CAP [Corrective Action Plan].”¹ On June 23, 2019, Mr. Vaughan responded that “we have been ready, willing and able to commence the engineering aspect of the project for some time, but for regulatory approvals.”²

On August 26, 2020, Mr. Suozzo contacted Mr. Vaughan stating, “please consider this email notification that a deficiency letter will be sent if we do not receive final design plans and

¹ Mr. Suozzo misunderstood the PUC process insofar as PUC approval was not required for Abenaki to proceed with contracting for engineering designs to address the water pressure issues.

² Mr. Vaughan appears to be saying that Abenaki could not proceed until some regulatory approval was given. The Commission’s Order No. 26,300 (October 23, 2019) at p. 6, however, clearly stated that: “The decision to proceed with detailed engineering designs lies solely with the Company.”

specification by October 1, 2020.” In his September 1, 2020 reply, Mr. Vaughan assigned blame for Abenaki’s delays to the PUC process, contending, among other things, that Abenaki found it “impossible to comply” with the December 31, 2019 deadline in the Commission Order No. 26,300. In fact, PUC Staff had recommended a deadline of March 31, 2020, but Abenaki insisted on December 31, 2019.

On September 9, 2020, Mr. Suozzo made an extremely accommodating offer to assist Mr. Vaughan in Abenaki’s effort to procure PUC approval, saying that “DES enforcement provides you with the opportunity to defend these project improvements and rate increases to your consumers. We would like to get formal enforcement into your hands as soon as possible to help this cause, but the first deadline is being pushed back to have a more realistic opportunity to meet the deadline.” He closes the email by saying: “If you want a formal violation sooner in order to help push for approvals from PUC and consumers, we can always keep the October 1 deadline proposed in my original email below. Please feel free to call and discuss.”

In the last email in the chain, Mr. Vaughan indicated that he could not commit to any of the deadlines set out by Mr. Suozzo. He said that “Abenaki is awaiting reinstatement of the Step II and its ability to file for recovery of the engineering design costs.” He further said: “If Abenaki had approval to recover the engineering design costs, we would otherwise be moving forward.”³ Finally, Mr. Vaughan stated: “Abenaki can *entertain* the deadlines only after it receives reinstatement of the Step II recovery ability.” (Emphasis supplied.)

The Commission issued its final order on rates in this proceeding (Order No. 26,205) on December 27, 2018, which, among other things, approved a Step II rate increase for up to \$100,000 in engineering design costs, contingent on the Commission’s approval of the engineering design. Abenaki, however, has never contracted an engineering firm to produce the designs and it missed its December 31, 2019 filing deadline without good cause.

If the Commission intends to consider the email chain provided by Abenaki in making its decision whether to extend the Step II deadline from nine months ago, Omni asks that the Commission consider, consistent with Puc 203.30 (c), the probative value of the information and whether such consideration protects Omni’s right of cross-examination pursuant to RSA 541-A:33, IV. Finally, it is Omni’s conclusion from the email exchanges that both Mr. Vaughan and Mr. Suozzo misapprehend the PUC process, that Mr. Vaughan somehow regards compliance with DES requirements as depending on PUC funding approval, and that Mr. Vaughan is leveraging the PUC process and the DES process against one another.

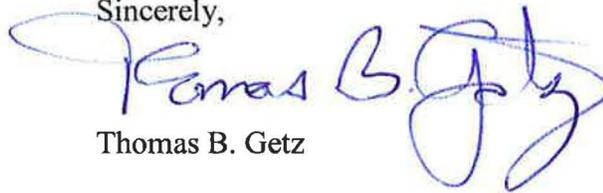
³ Here, Mr. Vaughan seems to be saying that Abenaki needs pre-approval of the engineering design costs before it can proceed. There was some confusion during the July 16, 2020 hearing whether Mr. Vaughan was asking for just the extension of the Step II deadline or some revision to the process in the form of pre-approval. See, Tr. pp. 62-66. In any event, in his email Mr. Vaughan appears to be telling Mr. Suozzo that Abenaki will not take any steps to comply with DES requirements unless, at a minimum, the PUC extends the Step II deadline.

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Omni's response is filed electronically only consistent with the Commission's March 17, 2020 suspension of the requirement to file paper copies. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas B. Getz". The signature is stylized and cursive, with a large initial "T" and "G".

Thomas B. Getz

TBG:sm

Enclosures

cc: Service List (DW 17-165)