

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DOCKET NO. DW 17-165

**ABENAKI WATER COMPANY, INC.
ROSEBROOK WATER SYSTEM
PETITION FOR CHANGE IN RATES**

**MOTION TO DEEM RATE FILING DEFICIENT
OR REJECT LATE-FILED TESTIMONY**

NOW COMES Omni Mount Washington Hotel, LLC (“Omni”), by and through its attorneys, McLane Middleton, Professional Association, and asks that the New Hampshire Public Utilities Commission (“PUC” or “Commission”) reject the late-filed testimony of Paula M. Ahern submitted by Abenaki Water Company, Inc. (“Abenaki” or “Company”) on June 1, 2018, or deem Abenaki’s December 7, 2017 petition for rate changes deficient and revise the procedural schedule accordingly. In support of its motion, Omni states as follows:

1. Ms. Ahern’s return on equity testimony had previously been filed as the subject of a Joint Petition for Declaratory Ruling or Rulemaking submitted by Abenaki and others on February 27, 2018, which became Docket No. DW 18-026.

2. Abenaki contends, in its June 1, 2018 filing, that it does not need Commission approval to file Ms. Ahern’s testimony in this proceeding. It cites to Puc 203.06 as “allowing” utilities to submit pre-filed testimony and Puc 1604.08 (c) (8) as requiring utilities to file information showing the rate of return on common equity.

3. Puc 203.06 (c) states: “All petitions seeking a rate adjustment *shall* be filed in compliance with Puc 1600 if applicable and *shall* be accompanied by pre-filed testimony and exhibits.” (Emphasis supplied.) In addition, Puc 1604.02 (a) (3) requires that a full rate case proposal contain written testimony. Moreover, Puc 203.05 (b) says that when a “petition is

deficient in any respect...such petition *shall* not be deemed to have been filed until the deficiency is corrected.” (Emphasis supplied.) These rules are mandatory; they do not provide for discretion in the absence of a proper request for and granting of a waiver.

4. Abenaki, however, appears to suggest that the Commission’s rules should be interpreted to mean that Abenaki may choose to file testimony at any time, even where, as here, the testimony is a fundamental part of the full rate case request and comes nearly six months after the rate filing. To the contrary, Omni believes that the proper interpretation of the Commission’s rules is that testimony such as that of Ms. Ahern was required to have been part of the December 7, 2017 rate filing, that Abenaki’s petition was therefore not filed in compliance with Puc 1600, and that Abenaki does not have free rein to introduce Ms. Ahern’s testimony at this late date.

5. In addition, Abenaki asserts that the parties are not disadvantaged by the late filing of Ms. Ahern’s testimony because the investigation of permanent rates has not started. It further asserts that good cause exists for the delay because Ms. Ahern’s testimony was only made affordable because the expense was split with two other utilities. Abenaki’s assertions do not tell the whole story.

6. As for the disadvantage to customers, Abenaki has created a procedural morass with respect to the filing of Ms. Ahern’s testimony in a separate proceeding, the belated filing of her testimony in this proceeding, as well as its delayed petition for temporary rates and its failure to notify customers of the proposed level of temporary rates.¹ In sum, it appears that as

¹ Abenaki did not mention temporary rates in its October 23, 2017 notice of intent to file, nor did it request any waiver seeking additional time to file testimony regarding temporary rates or return on equity. In its December 7, 2017 filing, Abenaki, without seeking leave to do so, said it “anticipates that it will make a temporary rate filing in the next week or two.” Abenaki took six (6) weeks to make its temporary rate filing; thirteen (13) days after the Commission had issued its order suspending the permanent rates tariff and scheduling a prehearing conference. Similarly, Mr. Vaughan said in his December 7, 2017 testimony, at p. 5, that he expected that return on equity testimony would be filed within 45-60 days; the filing in a separate proceeding occurred 82 days later.

part of its interest in “expediting the proceeding” the Company got ahead of itself. *See* May 31, 2018 cover letter filing Ms. Ahern’s testimony, p. 1. As for good cause for its delay, Abenaki disregards that Ms. Ahern’s testimony was filed over three (3) months ago in Docket No. DW 18-026.

7. Abenaki’s view of disadvantage may apply to the ability of Commission Staff to review Ms. Ahern’s testimony within the confines of the existing procedural schedule, but it ignores the Company’s obligations to comply with Commission rules and takes no account of the practical ability of customers to participate in the proceeding. Furthermore, to cure the procedural deficiencies caused by Abenaki, Omni submits that an appropriate course would include the Commission amending its January 5, 2018 order, deeming Abenaki’s petition to have been filed June 1, 2018, and scheduling a prehearing conference and/or technical session for the purpose of setting a new procedural schedule. As a consequence, the beginning of the 12-month suspension period pursuant to RSA 378:6 would be deferred until at least June 1, 2018, and the effective date for temporary rates could be set no earlier than such date.²

8. In conclusion, the Abenaki petition for rate changes was deficient for failure to include the testimony of Ms. Ahern, as well as to include the temporary rate testimony of Mr. St. Cyr. Accordingly, pursuant to Puc 203.05 (b), Omni urges the Commission to deem Abenaki’s rate filing deficient and restart the proceeding as discussed above or in a similar fashion. In the alternative, Omni moves that Ms. Ahern’s testimony not be admitted into the record in this proceeding. In any course, Abenaki’s customers should not bear the burden of the hasty decisions made by the Company in its effort to expedite a rate increase.

² Omni takes the position that the Commission, as a matter of discretion, should, in any case, set the effective date for temporary rates no earlier than July 1, 2018, i.e., the first billing date after curing the deficient filing as well as the hearing on temporary rates.

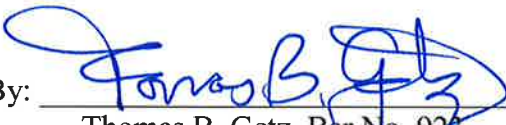
WHEREFORE, Omni respectfully requests that the Commission:

- A. Deem Abenaki's rate filing deficient as discussed herein; or
- B. Reject the filing of Ms. Ahern's testimony; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

Omni Mount Washington Hotel, LLC
By Its Attorneys,
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: June 18, 2018

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Certificate of Service

I hereby certify that on the 18th of June, 2018, an original and six copies of the foregoing Motion was hand-delivered to the New Hampshire Public Utilities Commission and an electronic copy was served upon the Distribution List.


Thomas B. Getz