

**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 COMPEL DISCOVERY

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”) compel Abenaki Water Company, Inc. (“Abenaki” or “Company”) to respond to Omni’s Set 2 Data Request No. 1 (b). In support of its motion, Omni states as follows:

1. Omni submitted data requests to Abenaki on June 21, 2018, pursuant to the procedural schedule issued by the Commission on April 11, 2018. In particular, Omni sought production of all documents related to the location and design of the storage tank associated with Abenaki’s proposed water pressure reduction project.

2. Puc 203.09 (g) provides that objections to data requests shall be provided within 10 days following receipt, which in this instance meant a deadline of July 2, 2018. Abenaki did not timely object.

3. Subsequently, Abenaki submitted its data responses on July 7, 2018. See Attachment A. In its response to Omni 1-1 (b), Abenaki stated that it “does not have the resources to investigate and locate” the documents sought by Omni. At the same time, however, in its response to Omni 1-1 (a), Abenaki refers to research it conducted and offers theories about the purpose and placement of the storage tank, but does not provide the supporting documents.

4. The Commission's rules on discovery provide that objections to data requests must be filed within 10 days following receipt and that failure to object without good cause shall be deemed a waiver of the right to object. See Puc 203.09 (g) and (h), respectively. Abenaki failed to timely object and, there appearing to be no good cause for such failure, has waived its right to object.

5. Puc 203.09 (i) provides that a motion to compel discovery must be filed within 15 business days of receiving a response and after a good faith effort has been made to resolve the dispute informally. On July 16, 2018, Mr. Getz telephoned Mr. St. Cyr, seeking to establish what documents Abenaki had available to it and what could be produced. Mr. St. Cyr said that he would need to discuss the issue with Abenaki. The only response made by Mr. St. Cyr, on July 27, 2018, was that Abenaki had reached out to Northpoint Engineering, a representative of which stated that they did not think they had information or firsthand knowledge of the system.

6. In conclusion, the documents Omni seeks are directly relevant to the reasonableness of the permanent rate increase that Abenaki proposes and whether it is furnishing safe and adequate service. Abenaki's bald response that it does not have the resources to produce documents is inadequate. It could have and should have objected and/or sought to address the issue informally with Omni. Accordingly, Omni's motion to compel should be granted.

WHEREFORE, Omni respectfully requests that the Commission:

- A. Grant Omni's motion to compel; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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

Dated: July 27, 2018

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Certificate of Service

I hereby certify that on the 27th of July, 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