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August 13, 2018

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 18
Concord, New Hampshire 03301

Re: Docket No. DW 17-165
Abenaki Water Company
Request for Change in Rates
Motion for Rehearing of Order No. 26,157 (July 13, 2018)

Dear Ms. Howland:

Please be advised that the Office of the Consumer Advocate ("OCA") joins in the Motion for Rehearing of the above-referenced order filed today by intervenor Omni Mount Washington, LLC ("Omni") for purposes of RSA 541. For the reasons stated in Omni's motion, the OCA believes the Commission should grant the alternative relief referenced in Paragraph 1 of the motion – i.e., that the Commission deem the request of petitioner Abenaki Water Company ("Abenaki") to have been filed on June 1, 2018.

A rate case conducted pursuant to RSA 378 and Chapters Puc 200 and Puc 1600 of N.H. Code Admin. Rules must be an orderly process that is respectful of the due process rights of all parties. Yet, in this instance, Abenaki has treated this proceeding as one in which the utility makes an initial filing, thus establishing a date on which the ultimately approved rates will be effective on a reconciling basis, after which the utility is free to amend its request and the asserted bases for the request essentially as the utility finds strategically and organizationally convenient. This is simply not cricket.

Recourse to the legal fundamentals may be useful. New Hampshire law requires a utility seeking to increase its rates to file a schedule reflecting the new rates. RSA 378:1. Abenaki took this step on December 7, 2017. RSA 378:6, I(a) allows the Commission to "suspend the taking effect of said schedule" to permit the Commission to conduct an investigation of up to 12 months. The Commission issued such a suspension order on January 5, 2017. But Abenaki is no longer relying on the rate schedule it filed on December 7 – and, indeed, by virtue of certain subsequent filings (the Ahearn testimony concerning Return on Equity submitted on June 1, 2018; the "Pressure Reduction" presentation of June 21, 2018), the Company has now significantly modified and increased its requested rate increase.

The OCA is aware that the Commission has long granted utilities a measure of latitude with respect to the subsequent modification of the rate schedules with which utilities initiate rate cases. Indeed, the process of negotiating resolutions to rate cases would be impossible if utilities were simply bound by their initially filed schedules. But the question of what cost of capital should apply to a utility's revenue requirement is not just another prosaic aspect of a rate proceeding – it is, rather, the utility's "threshold entitlement" in a proceeding whose purpose is to establish non-confiscatory, just and reasonable rates. *Appeal of Public Service Co. of N.H.*, 130 N.H. 748, 751 (1988) (citing *Federal Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 603 (1944) and *Bluefield Co. v. Pub. Serv. Comm.*, 262 U.S. 679, 692 (1923)) (other citations omitted).

Therefore, the question is not whether Abenaki's rate filing of last December was deficient because it lacked expert ROE testimony; this is not problematic for the reasons stated in Order No. 26,157. Rather, the question is what notions of fundamental fairness and due process require when Abenaki decided, without leave of the Commission, to replace its initial non-expert assessment of ROE with new testimony from an outside consultant whose avowed purpose is to make an argument for a significant ROE premium based on the untested premise that the smaller a water company is the more risky its shares are from an investor perspective.

The OCA does not object to Abenaki making this argument through its expert ROE witness. The OCA agrees with the Commission that the procedural schedule previously approved in this docket is adequate to the task of allowing the parties to subject Abenaki's most recent ROE testimony to suitably skeptical scrutiny. The real issue is that Abenaki is no longer relying on critical aspects of its December 7, 2017 rate case filing, so that date should no longer be the effective date for whatever rates are ultimately approved in this proceeding. The correct date is June 1, 2018 and the Commission should grant rehearing so as to clarify this point.

We also share Omni's concerns about Abenaki's revelation in June that the $22,000 increase in revenue requirement associated with the proposed step adjustment has now grown to $77,000. Because those developments were not addressed in the Commission's July 13 order, we likewise do not address them here, beyond suggesting that the Commission place Abenaki on notice that the utility may not simply continue to revise its requested rate increase upward at whim. It is imperative that this case proceed in an orderly and predictable fashion; the Commission should make clear it expects cooperation to that end from every utility, of whatever size, that seeks to increase its rates.

Thank you for considering our views.

Sincerely,

D. Maurice Kreis
Consumer Advocate

cc: Service List