

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

**DOCKET NO. DW 17-165**

**ABENAKI WATER COMPANY, INC.  
REQUEST FOR CHANGE IN RATES**

**MOTION FOR REHEARING**  
**ORDER DENYING MOTION TO DEEM RATE FILING DEFICIENT**

NOW COMES Omni Mount Washington, LLC (“Omni”), by and through its attorneys, McLane Middleton, Professional Association, and respectfully requests that the Public Utilities Commission (“Commission” or “PUC”) grant rehearing of the July 13, 2018 Order Denying Motion to Deem Rate Filing Deficient (“July 13 Order”) for the reasons set forth below.

1. On June 18, 2018, Omni filed a motion asking the Commission to reject the late-filed testimony of Paula M. Ahern, submitted on June 1, 2018, or deem Abenaki Water Company, Inc.’s (“Abenaki”) December 7, 2017 petition for rate changes deficient (“Motion”). Among other things, Abenaki proposed alternative relief, i.e., that the Commission deem Abenaki’s petition to have been filed as of the date of the Ahern testimony.

2. Neither Abenaki nor PUC Staff objected to Omni’s Motion.

3. In its July 13 Order, the Commission found, among other things, that its rules “do not specifically require the filing of either a DCF analysis or ROE expert testimony,” that Abenaki’s initial petition was not deficient, and that “as a participant in the ROE docket, Omni was put on notice as to the substance of the Ahern ROE Testimony well before the testimony was filed in this case.”

4. A motion for rehearing must (1) identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered, (2) describe how each error causes the committee’s order or decision to be unlawful, unjust or unreasonable, and (3) state

concisely the factual findings, reasoning or legal conclusion proposed by the moving party. Puc 202.29 (d).

5. The purpose of rehearing “is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision ...” *Dumais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds “good reason” or “good cause” has been demonstrated. *See O’Loughlin v. NH Pers. Comm.*, 17 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No 25,810 at 4 (Sept. 8, 2015).

6. Omni contends that there is good cause for rehearing in that the Commission misconceived the obligation of customers, as opposed to the Commission, with respect to Puc 203.05 (b), which requires the Commission to notify a petitioner when a petition is deficient. The July 13 Order states: “To the extent any party believed Abenaki’s initial petition was deficient, that deficiency should have been raised shortly after the filing was made in December 2017. This would have allowed Abenaki to cure any deficiencies in the filing permitting the rate case to proceed.” It is an error of law for the Commission to shift its regulatory burden under PUC rules to Omni or other customers. It is further an error of reasoning for the Commission to blame Omni for waiting until June 18, 2018 to raise its concerns inasmuch as Abenaki did not file Ms. Ahern’s testimony in this case until June 1, 2018.

7. Omni contends that there is good cause for rehearing in that the Commission appears to have misconceived Omni’s position with respect to Ms. Ahern’s testimony when it said “we accommodate their [small water companies] attempts to present reasonable alternatives

to a full DCF analysis and separate ROE testimony.” The Commission’s discussion of the resource limitations of small water companies and accommodating reasonable alternatives does not fit the facts of this case inasmuch as Abenaki is now seeking to introduce separate ROE testimony that it had available for months and for which it pursued a separate and unsuccessful strategy to impose the costs of a premium rate of return on its customers outside of this rate proceeding. Omni’s position is that allowing late filing of Ms. Ahern’s testimony without any procedural consequence to Abenaki is not reasonable under the circumstances.

8. Omni contends that there is good cause for rehearing in that the Commission overlooked Omni’s alternative request for relief, i.e., that the date of filing of Ms. Ahern’s testimony be used for purposes of setting the effective date for temporary rates. At the time of the filing of its Motion, Omni believed that such relief could reasonably address the notice issues it had raised with respect to temporary rates. However, as noted below, the target keeps moving and Abenaki now wants to change its request and supplement or amend its petition further.

9. Omni contends that there is good cause for rehearing in that circumstances have changed since the filing of Omni’s motion. Specifically, Abenaki filed, on June 20, 2018, substantial new information intended to increase its proposed step increase from 6.08% to 28%.

10. Finally, the Commission’s findings noted above are beside the point insofar as they assert that PUC rules do not require the filing of ROE expert testimony and that Omni was on notice because it was a participant in another proceeding, the ROE docket. With respect to the former, the Commission’s finding suggests that a petitioner for a rate increase can file its testimony at any time if the subject matter of the testimony is not specifically required by rule and, with respect to the latter, the Commission’s finding ignores the fact that other parties to this case are not participants in the ROE docket and it unfairly imposes a burden on Omni to take

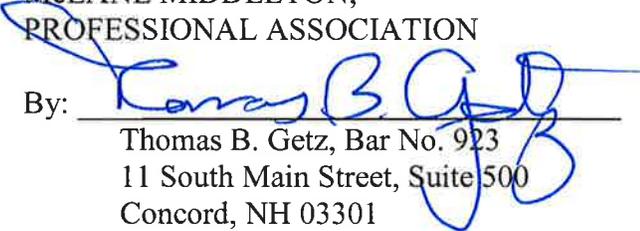
notice of a case that the Commission has closed, in essence, saying that Omni should have known that the Ahern testimony was going to be considered in this docket.

11. In conclusion, Omni believes that there is good cause for rehearing on multiple grounds and it asks that the Commission reconsider its previous decision. There is sufficient basis to conclude that Abenaki’s prosecution of this case has failed to comply with Commission rules and provide due process to the detriment of Omni and other customers/parties. Omni therefore urges the Commission to take corrective actions to account for Abenaki’s procedural irregularities that would both defer the effective date of temporary rates and revise the Procedural Schedule to take into consideration the late filing of the Ahern testimony and the later request to more than quadruple, nearly quintuple, the proposed step increase.

WHEREFORE, Omni respectfully requests that the Commission:

- A. Grant rehearing as requested herein; and
- B. Grant such further relief as it deems appropriate.

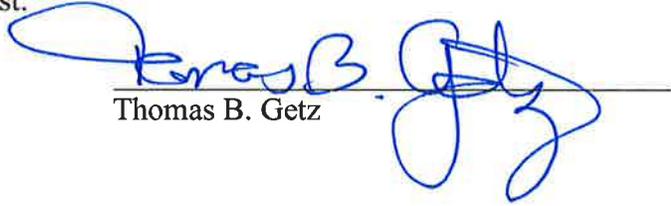
Respectfully submitted,  
  
Omni Mount Washington, LLC  
  
By Its Attorneys,

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Dated: August 13, 2018

Certificate of Service

I hereby certify that on the 13<sup>th</sup> day of August, 2018, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Public Utilities Commission and an electronic copy was served upon Service List.

  
Thomas B. Getz