

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 17-165

Abenaki Water Company, Inc. – Rosebrook Division
Permanent Rate Proceeding

OBJECTION TO OMNI MOUNT WASHINGTON HOTEL, LLC’S
MOTION FOR REHEARING

NOW COMES, Abenaki Water Company, Inc.’s (“Abenaki”) pursuant to Puc 203.07(f), and hereby objects to Omni Mount Washington Hotel, LLC’s (“Omni”) motion for rehearing. The Commission should deny Omni’s motion because its arguments are without merit or it merely restates prior arguments and relief requested and asks for a different outcome. In support of this objection, Abenaki states as follows:

Omni’s Arguments

1. In its initial Motion to Deem Rate Filing Deficient or Reject Late-Filed

Testimony, dated June 18, 2018, Omni made the following arguments:

- a) Abenaki should have filed the testimony of Paula M. Ahern, CRRA, with the initial pre-filed direct testimony Abenaki filed on December 7, 2017;
- b) Abenaki has created a procedural morass by filing Ms. Ahern’s testimony in a separate proceeding, filing it ‘late’ in the rate case, and filing a request for temporary rates “late”; and
- c) Abenaki’s “petition for rate changes was deficient for failing to include the testimony of Ms. Ahern, as well as to include the temporary rate testimony of Mr. St. Cyr.”

Omni requested that the Commission either deem Abenaki’s filing as having been filed on June 1, 2018 or not admit Ms. Ahern’s testimony into the record.

2. In its motion for rehearing, filed on August 13, 2018, Omni reiterated its request for relief and argued that the Commission:

a) committed an error of law by shifting the regulatory burden of Puc 203.05(b) to Omni or other customers;

b) misconceived Omni's position and that allowing Ms. Ahern's testimony without any procedural consequence to Abenaki was not reasonable;

c) 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;

d) did not consider 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%; and

e) unfairly imposed a burden on Omni to take notice of Docket No. DW 18-026 that is now closed.

The Commission has not Improperly Shifted a Burden

3. Omni's argument that the Commission improperly shifted the burden of finding a deficiency to Omni is confusing and without merit. First, it is important to note that although the Commission referenced Puc 203.05(b) (requiring the Commission to notify a petitioner if it rejects a petition or motion) in Order No. 26,157, petitions are not required for permanent rate changes. Rate changes occur upon the filing of new rate schedules with 30-days notice. See, RSA 378:1 through 378:6. Abenaki filed its schedules with the requisite notice. See Docket No. DW 17-165 Tab 1 and Tab 3. Second, the Commission need not act under Puc 203.05(b) when a petition or motion is complete. In the instant docket, the Commission issued an order suspending the effective date of the rate schedules. In so doing, the Commission thereby implicitly concluded that Abenaki's December 2017 permanent rate filing and petition for a step

increase were sufficiently complete. See Order No. 26,095 dated January 5, 2018. No Commission action under Puc 203.05(b) was, therefore, warranted. Thus, the “petition” to which Omni refers is either the petition for a step increase, temporary rate petition, or the petition for a determination of a generic return on equity (“ROE”) in Docket No. DW 18-026.

4. Assessing Omni’s argument as to these petitions, it is also evident that the Commission has not improperly shifted a burden to Omni. For example, with respect to the temporary rate petition, the Commission issued a supplemental order of notice and scheduled a hearing to cure any perceived defect in the notice for temporary rates. An opportunity to be heard will be allowed at the hearing. Next, with respect to the ROE docket¹, the Commission also issued an order of notice to the public which afforded another opportunity to be heard and certainly did not improperly shift a burden to Omni. As Omni notes, the ROE docket is now closed, so any argument of improper burden shifting in that docket is now moot. More broadly, if Omni or any party disagreed with these Commission actions, they could have raised objections or concerns pursuant to the Commission’s rules or RSA CHAPTER 541. In that vein, the Commission’s dicta that Omni could have raised its concerns sooner did not shift any burden of Puc 203.05(b) to Omni. Rather, the Commission signaled that Omni was involved with these dockets yet waited to raise its concerns. For these reasons, Abenaki urges the Commission to find Omni’s argument that the Commission improperly shifted a burden to be without merit.

Consequences have Occurred

5. Contrary to Omni’s argument that consequences have not occurred as a result of Abenaki’s so-called “late” filings, consequences have occurred. The Commission provided

¹ Docket No. DW 18-026, Abenaki Water Company, Inc., Hampstead Area Water Company, Inc., and Lakes Region Water Company, Inc., *Request for Return on Equity*.

additional due process protections to the parties and public by requiring Abenaki to publish a supplemental order of notice alerting the public to the issues of the docket and the Commission set a hearing on temporary rates for August 23, 2018. See, Supplemental Order of Notice dated July 24, 2018 in Docket No. DW 17-165. These Commission actions, taken prior to Omni's motion for rehearing, directly refutes Omni's contentions and implied argument that it and the public are being denied proper due process because there are no 'consequences'.

Ahern Testimony is not Necessary for Temporary Rates

6. Abenaki filed the ROE testimony of Ms. Pauline Ahern in its rate case to support its permanent revenue requirement because Ms. Ahern's testimony regarding what generic return on equity the Commission should adopt for small water utilities was relevant to Abenaki's rate proceeding. Abenaki filed this testimony in the rate case at the request of Staff. Pursuant to RSA 378:27, temporary rates are based on the "reports of the utility filed with the commission". The Commission may grant temporary rates for the duration of the proceeding if, in its opinion, the public interest so requires and the records of the public utility on file with the Commission indicate it is not earning a reasonable return on its property used and useful in the public service. *New Hampshire Gas Corporation*, Docket No. DG 09-038, Order No. 24,964, at 6. The standard for approval of temporary rates is less stringent than that for permanent rates. *Id.* Temporary rates are to be determined expeditiously and without the extent of investigation necessary for determining permanent rates. *Id.*, citing *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 660 (1991). Therefore, Ms. Ahern's testimony is not necessary for whether or when temporary rates may commence. Furthermore, RSA 378:27 allows the Commission to authorize effective dates as early as the date on which the petition for a *permanent rate change* is filed. *Id.*, citing *Appeal of Pennichuck Water Works*, 120 N.H. 562, 567 (1980) (emphasis added). For these

reasons, Omni's argument that temporary rates should not go into effect any earlier than the date Abenaki filed Ms. Ahern's testimony is inconsistent with settled law.

Step Increase is not Necessary for Temporary Rates

7. Omni erroneously conflates the 'new information' Abenaki filed to support its petition for a step increase for the pressure reduction project with the evidence necessary for approval of temporary rates. As noted above, RSA 378:27 sets forth a lower standard of review for temporary rates, notably because RSA 378:29 protects customers by allowing permanent rates to be fully reconciled with temporary rates such that customers are not charged unjust or unreasonable rates. For these reasons, Omni's argument that a rehearing is justified because circumstances regarding Abenaki's proposed step increase have changed is premature. Discovery on the step increase has yet to occur and filings pertaining to the step increase are not necessary for the Commission's determination on temporary rates.

Illusory Confusion

8. Abenaki would also like to take this opportunity to address Omni's characterization of its filings as deficient and as a moving target so as to paint Abenaki's filings as a morass of confusion. As the Commission is aware, regulated utilities may, at times, have multiple open dockets before the Commission concerning separate, discrete issues and which may be later combined for convenience. See, for example, *Public Service Company of New Hampshire d/b/a Eversource Energy*, Docket Nos. DE 09-035, DE 11-250, and DE 14-238. *Lakes Region Water Company, Inc.*, Docket Nos. DW 07-105, DW 10-043, DW 10-141, and DW 11-021. The Commission has also combined dockets of affiliates. See, for example, Docket No. DW 08-052, Pittsfield Aqueduct Company, Inc. and Docket No. DW 09-051, Pennichuck East Utility, Inc. In Docket Nos. DW 08-052 and DW 09-051, the resulting

permanent rates were very much different than initially proposed because certain rate groups in Pittsfield Aqueduct Company, Inc. were transferred to Pennichuck East Utility, Inc. (“PEU”) and PEU’s capital recovery surcharges, not previously requested, were approved. Therefore, the existence of multiple dockets is not a circumstance necessarily engendering confusion. Also, it is possible for rates and customer rate design to change subsequent to a utility’s initial rate filing. Furthermore, it is also not unusual for a water utility to attempt to save ratepayers regulatory costs by foregoing ROE pre-filed direct testimony and filing such testimony later in the proceeding. See, *Aquarion Water Company of New Hampshire, Inc.*, Docket No. DW 12-085. Indeed, the Commission did not find such ‘late’ filing of ROE testimony by Aquarion Water Company of New Hampshire as fatal to due process. *Id.* For these reasons, the Commission should disregard Omni’s characterizations of Abenaki’s filings as causing a procedural morass and deny Omni’s request to deem Abenaki’s filings as deficient.

WHEREFORE, Abenaki respectfully requests the Commission:

- A. Deny Omni’s motion for rehearing; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

Abenaki Water Company, Inc.

By its Attorney,
NH BROWN LAW, PLLC

Dated: August 16, 2018

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Certificate of Service

I hereby certify that a copy of the foregoing objection has been emailed this 16th day of August, 2018 to the docket-related service list.



Marcia A. Brown, Esq.