

**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 for Hearing on Service Company Charges**

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”) schedule a hearing for the purpose of determining whether charges by Abenaki Water Company, Inc. (“Abenaki”) to its affiliate, New England Service Company (“NESC”), are recoverable as rate case expenses under Puc 1907.01. In support of its motion, Omni states as follows:

**I. BACKGROUND**

At issue are \$26,369 in Abenaki charges to its affiliate, New England Service Company, which Abenaki seeks to recover as rate case expenses under Puc Chapter 1900. On September 9, 2019, in its response to Staff’s August 15, 2019 overall recommendation regarding the recovery of rate case expenditures, Omni, among other things, took the position that Abenaki’s charges to NESC are not eligible for recovery under Puc 1907.01 (a) and that NESC is not an eligible service provider under Puc 1903.06. The question of whether service company charges should be eligible for recovery as rate case expenses appears to be an issue of first impression under the Commission’s rules.<sup>1</sup>

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<sup>1</sup> While the Commission allowed recovery of certain NESC charges in Docket No. DW 15-199, Order No. 25,945 (September 26, 2016), and denied certain costs because of their nature, it did not consider the underlying question of whether such charges should be recoverable at all.

In Order No. 26,295 (October 1, 2019), the Commission withheld decision on recovery of the disputed \$26,369 and directed Abenaki to respond within 14 days. On October 11, 2019, Abenaki argued that Omni had overlooked the fact that Rosebrook has no employees and had filed an affiliate agreement with the Commission. It also argued that the costs related to the rate case are based on actual hours incurred and are not in Rosebrook's revenue requirement.

As part of its Motion for Rehearing of Order No. 29,265, Omni pointed out that "the \$29,369 in expenses were in fact for matters handled by management and staff of Rosebrook through an affiliate agreement and the services of those employees are reflected in the test year and resulting revenue requirement." Motion for Rehearing, p. 10. The Commission denied Omni's Motion for Rehearing by Order No. 26,312 (November 27, 2019) but did not address the propriety of the \$26,369 in charges to NESC.

On December 11, 2019, Staff filed a letter explaining "why the Affiliate Admin and General Salaries cost of \$60,604 reported in the NHPUC Audit Report...is different than the amount included in the O&M Expense of the Revenue Requirement filed with the Settlement Agreement on November 5, 2018." Staff concluded its letter by renewing its August 15, 2019 recommendation "to authorize Abenaki to recover the \$26,369 in rate case expenses related to New England Service Company as those expenses are not included in the Abenaki's approved revenue requirement" but it did not explain why such costs should be eligible for recovery under the Commission's rules.

Omni filed a request for the opportunity to respond to Staff's letter on December 19, 2019, which the Commission granted by a secretarial letter on December 23, 2019. Abenaki has objected to Omni's request and asked for rehearing of the Commission's decision. The Commission has not yet ruled on Abenaki's objection and motion.

## II. DISCUSSION

### A. Recovery of Services of NESC Employees as Rate Case Expenses

The Commission's rules provide, in pertinent parts:

Puc 1907.01 Expenses Not Allowed. Expenses not recoverable as rate case expenses shall include:

(a) Expenses for matters handled by service providers that are typically performed by utility management and staff of the utility, based on their experience, expertise, and availability;

(b) Expenses typically included in a utility's test-year revenue requirement or any expense for which recovery is prohibited by other commission rule.

Puc 1903.06 "Service provider" means any natural person or legal entity who provides expert consulting, administrative, or legal services to a utility and whose services are not already included in the utility's revenue requirement.

Separate but related questions arise under the rules. First, do charges to NESC qualify as recoverable rate case expenses, and, second, are the services of the service company employees already included in Rosebrook's revenue requirement? As explained below, Omni believes that the expenses for which Abenaki seeks recovery do not qualify under the Commission's rules because the expenses are for matters that are typically (and were actually) performed by utility staff and management (which in this case means NESC) and NESC is not an eligible service provider inasmuch as services it provides are included in Abenaki's revenue requirement.

In essence, Rosebrook's management and staff resides in NESC and their services in the test year were shared with other affiliates, namely, White Rock Water and Lakeland Management. Employees of NESC simply do directly for Rosebrook, White Rock Water and Lakeland Management (and now Tioga Water) what direct employees do for other utilities, and just as for a utility with direct employees, management and staff costs are already reflected in Abenaki's rates.

Abenaki and Staff both advance the argument that rate case expenses should be recovered because the rate case expenses themselves are not reflected in Abenaki's revenue requirement, but that is not the correct focus under the Commission's rules. It may be the case that the specific rate case expenses or costs are not in the revenue requirement (because that is how ratemaking works) but the correct focus is on whether the salaries of the employees who *perform* the rate case related services are reflected in Abenaki's revenue requirement, which does in fact include \$87,601 for Administrative and General Expenses.

Because Abenaki's share of the salaries of NESC employees appears to be already reflected in the rates it collects from customers, if Abenaki were also allowed to collect a surcharge for the actual work performed by NESC employees on the rate case, then customers would be paying twice; once for the salaries of the employees who do the work and a second time for the work that they do. NESC would be correspondingly double recovering because it would receive payments from Abenaki based on a revenue requirement that included Administrative and General Expenses and it would also collect a surcharge for the specific tasks that employees performed on the rate case.

As noted above, in its October 11, 2019 filing, Abenaki contended that "Omni's argument should be denied because it overlooks the fact that AWC Rosebrook has no employees and AWC Rosebrook has filed its affiliate agreement at issue with the Commission." Omni understands that Rosebrook has no direct employees and it does not dispute that there is an affiliate agreement on file with the Commission. Rather, Omni's position is that, if Rosebrook had direct employees who spent time on the rate case, such expenses would clearly not be eligible for recovery and, under the same logic, where Abenaki has decided to structure its operations such that NESC provides services to its affiliated water utilities indirectly, rate case

expenses should likewise not be recoverable, as distinguished from the salaries of employees already included in rates.

### **B. Estimated Rate Case Expenses**

The Commission's rules provide that when a utility files a full rate case it shall, among other things, file a detailed description of rate case expenses actually incurred and projected total rate case expenses, which it shall update every 90 days. Puc 1905.01. In addition, Puc 1904.01 states that:

No utility shall recover from its ratepayers any rate case expense unless such expense has been found by the commission to be just and reasonable and in the public interest *and otherwise conforms to the requirements of Chapter Puc 1900.* (Emphasis supplied.)

In this proceeding, it does not appear that Abenaki filed an estimate of rate case expenses, sought a waiver of the rule, or is otherwise exempted from it.<sup>2</sup> Accordingly, Abenaki is not in conformance with the requirements of Chapter Puc 1900 and therefore shall not recover rate case expenses from its ratepayers.

### **C. Conclusion**

Staff's explanation of the difference between the amount reported in its Audit Report for Affiliate Admin and General Salaries, and the amount included in the O&M Expense of the Revenue Requirement filed with the Settlement Agreement may reconcile the different purposes of those numbers, but Staff does not address how its explanation resolves the issue of whether, under the Commission's rules, customers should be compensating Abenaki for charges to NESC for rate case expenses. The fundamental question of law and policy under the Commission's rules concerns whether an affiliate service company should be treated like utility management and staff, or a third-party vendor.

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<sup>2</sup> In Docket No. DW 15-199, Abenaki Water Company, Inc., it appears that Abenaki filed the estimate required under Puc 1905.01 on January 25, 2016, approximately six months into the proceeding.

Omni seeks an adjudicative hearing pursuant to RSA 541-A:31, III for the purposes of establishing facts relevant to the recovery of Abenaki charges to NESC for rate case expenses, including the opportunity to question witnesses from Abenaki and Staff, and making argument as to the recoverability of such charges under the Commission's rules. In support of its request, Omni notes that the Commission granted a hearing relative to a dispute over rate case expenses in Docket No. DW 15-209, Lakes Region Water Company (Secretarial Letter dated April 6, 2017), though in the circumstances of that case the hearing was limited to oral argument.

WHEREFORE, Omni respectfully requests that the Commission:

- A. Grant Omni's Motion, and
- B. Grant such further relief as deemed appropriate.

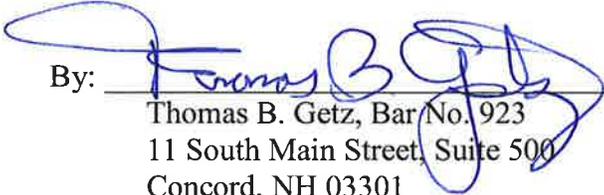
Respectfully submitted,

Omni Mount Washington Hotel, LLC  
By Its Attorneys,

McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: January 13, 2020

By: \_\_\_\_\_

  
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Certificate of Service

I hereby certify that on the 13<sup>th</sup> of January, 2020, an original and six copies of the foregoing Objection was hand-delivered to the New Hampshire Public Utilities Commission and an electronic copy was served upon the Distribution List.

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Thomas B. Getz