

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-165

**ABENAKI WATER COMPANY, INC.
ROSEBROOK WATER SYSTEM**

Petition for Change in Rates

Order Affirming and Clarifying Step II Adjustment

ORDER NO. 26,300

October 23, 2019

In this order, the Commission confirms and clarifies its prior ruling regarding the contingent approval of the Step II adjustment authorized in Order No. 26,205 (December 27, 2018). This order also approves an extension of the deadline to file the Step II adjustment request from September 30, 2019, to December 31, 2019.

I. PROCEDURAL HISTORY AND BACKGROUND

Abenaki Water Company, Inc. (Abenaki or the Company), is a New Hampshire public utility comprised of five water systems, including the Rosebrook Water System (Rosebrook). Abenaki petitioned for a permanent rate increase for Rosebrook on December 7, 2017. The Office of the Consumer Advocate (OCA) filed a letter of participation on December 19, 2017. The Commission granted intervenor status to Bretton Woods Property Owners Association (BWPOA), the Rosebrook Association, Omni Mount Washington, LLC (Omni), and Forest Cottages Association (Forest Cottages); each of whom participated in this phase of the proceeding.

On December 27, 2018, the Commission issued Order No. 26,205 (Order) approving a Settlement Agreement, which included, among other things, an increase in rates and contingent approval of a second step adjustment (Step II) rate increase. Step II provided for rate recovery of up to \$100,000 for detailed engineering design and cost estimates, to be developed by Horizons Engineering, Inc. (Horizons), the Company's engineering consultant, to resolve a significant water

pressure problem in Rosebrook's water system. The Order set a September 30, 2019, deadline to file the Step II petition for recovery.

Consistent with the Settlement Agreement, the Commission made Step II contingent upon its approval of the engineering design, withholding its determination of prudence and inclusion in rates until that time. The Order directed the parties to submit a procedural schedule that would develop a record so the Commission could adjudicate those issues efficiently. Order at 10.

The Commission approved the procedural schedule on January 9, 2019, scheduling a technical session for January 23. The Commission approved a revised procedural schedule on January 30, setting the discovery schedule and an additional technical session on March 20.

On June 7, the New Hampshire Department of Environmental Services (DES) issued a letter to Abenaki containing the results of a recent sanitary survey of the Rosebrook water system. DES categorized the extreme pressure situation in the water system as a "significant deficiency" and required Abenaki to immediately correct the issue or respond with a corrective action plan within 30 days. On June 17 the Company provided the Commission with its response to DES. Staff filed its recommendation on July 15. The OCA, Abenaki, Omni, and the BWPOA and Forest Cottages all filed responses to Staff's recommendation.

Abenaki's petition and subsequent docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-165.html>. Additional procedural history is described in the Order.

II. POSITIONS

A. Staff

Staff recommended the Commission authorize Abenaki to proceed with contracting Horizons to create the detailed engineering designs needed to resolve the water pressure issue. Staff Recommendation of July 15, 2019, at 1. Staff noted that, after the conclusion of the

technical session held on March 20, 2019, it was determined that Abenaki and Omni should conduct further discussions to resolve their differences regarding the scope of engineering services provided by Horizons. On May 10, the Company informed Staff that their discussions with Omni were not productive, and encouraged Staff to recommend to the Commission that Abenaki be authorized to move forward with design completion and initial construction of the proposed project.

Staff noted that Rosebrook's extreme pressures often exceeded 200 pounds per square inch (psi), which is a violation of DES rules and NH Code Admin. Rules Puc 604.03(a). That rule requires water utilities provide no more than 125 psi water service. Puc 604.03(c) further requires water utilities to make every reasonable effort to deliver service in the pressure range from 30 to 100 psi. Staff detailed Abenaki's accounts of the water loss, wear and tear, and hazards from the increased pressure.

Staff reviewed Horizons' 2017 study of the water pressure problem, which included the creation of a hydraulic model and proposed a three-pump solution. In 2018, Horizons further refined its solution and recommended a four-phase approach. The fourth phase would have included construction of a water tank, but that phase was later determined to be non-essential to pressure reduction and eliminated from consideration. Commission Staff, Recommendation, July 15, 2019, at 4. With construction of a water tank no longer under consideration, Staff surmised that the estimated \$100,000 of detailed engineering design costs would probably be lower, as \$31,000 of that cost was associated with designing the water storage tank.

Staff pointed out the difficulty faced by the Company in deciding whether to proceed with the detailed engineering design without assurance from the Commission that it would be authorized to recover the costs. Staff also identified the Company's challenge to demonstrate the proposed solutions were prudent prior to completion of the detailed engineering design.

Staff recommended the Commission require Abenaki to periodically submit reports regarding the Company's efforts to apply for low cost state financing and extend the deadline to file the Step II recovery to March 31, 2020.

B. Abenaki

Abenaki would like the Commission to direct it to contract with Horizons to ensure that it will be permitted to recover the associated costs. The Company agreed with Staff's position that the Commission should authorize Abenaki to proceed with contracting Horizons to create the detailed engineering designs. The Company disagreed, however, that it should be ordered to report the status of its application for state funds. Having missed the deadline to apply for those funds, the Company stated it was prepared to pursue private financing. The Company also disagreed with the deadline extension. Abenaki, instead, suggested the deadline be extended until December 31, 2019.

C. OCA

The OCA disagreed with Staff's recommendation, noting that the proceeding is still "very much a contested case," with the bulk of the Company's customers objecting to the underlying Settlement Agreement approved in the Order. Office of the Consumer Advocate, Response to Staff's Recommendation, July 15, 2019, at 1. While the OCA noted Rosebrook's pressure issue is serious, the OCA argued that there is no basis for Commission authorization to contract with an engineering firm to plan necessary capital improvements. The OCA argued it is the Company's statutory responsibility, pursuant to RSA 374:1, to furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable. The OCA said that Commission authorization of the detailed engineering design "would imply a prudence determination, which is neither contemplated by the Settlement Agreement nor consistent with applicable law." *Id.* at 2.

The OCA argued that the parties could not agree on the “scope of engineering design,” and stated further efforts should be abandoned. The OCA, instead, made three recommendations: (1) adopt the March 31, 2020, deadline proposed by Staff; (2) remind the Company that it is responsible for making prudent investment decisions, subject to prudence review by the Commission; and (3) reaffirm that the Commission will consider the prudence of the Step II expenditures only when filed. The OCA argued the sense of urgency expressed in the Sanitary Survey is of the Company’s own making, thus not an opportunity for Abenaki to evade a prudence examination.

D. Omni

Omni agreed with the OCA that the Commission should not authorize the Company to proceed in contracting with Horizons. Omni stated that Abenaki “could and should have already proceeded down that path on its own volition,” arguing that the Company does not need authorization to contract with Horizons. Omni Mount Washington, LLC, Response to Staff Recommendation, July 26, 2019, at 1. Omni stated that the Company must proceed with the designs before it may apply for the relief it seeks, per the framework for recovery provided in the Order, which includes a prudence review after completion of the engineering designs. Omni argued that the Company’s pursuit of concurrence among the parties on the scope of the engineering plans is misplaced. Omni stated that the Company wanted some assurance that it would recover the costs for the engineering plans before filing for recovery, which is inconsistent with the path to recovery provided by the Order.

Omni did not agree with the scope of the Company’s engineering plans as the plans are conceptual and too dynamic. Omni argued that Abenaki had yet to provide sufficient detail for Omni or the Commission to determine whether Abenaki’s proposal is the best and most cost effective solution. Omni Mount Washington, LLC, Response to Staff Recommendation,

July 26, 2019, at 2. Omni stated that the Company failed to show that its plans were the least costly and best solution, which is a standard equivalent to a prudence review.

Omni did not specifically agree with Staff's recommendation for periodic reporting of the Company's efforts to procure low cost financing. Instead, Omni stated that the Company should be pursuing such options and should be held accountable for "taking all prudent measures to ensure reasonable financing costs and rates to customers." Omni Mount Washington, LLC, Response to Staff Recommendation, July 26, 2019, at 2. Omni opposed an extension of the Step II submission deadline. *Id.*

E. BWPOA and Forest Cottages

BWPOA and Forest Cottages joined with the OCA's response to Staff's recommendation. Both parties made three recommendations: (1) defer the filing deadline to March 31, 2020; (2) remind the Company of its duty to make prudent investment decisions subject to Commission review; and (3) do not authorize the Company to contract with Horizons, as prudency determinations can only be made after the filing is made. BWPOA and Forest Cottages also suggested that Horizons be requested to reissue its letter of engagement with the Company, reflecting the absence of the water storage tank.

III. COMMISSION ANALYSIS

In Staff's recommendation, as joined by the Company in part, we are asked to authorize Abenaki to contract with Horizons to develop engineering designs to resolve Rosebrook's water pressure problem. As stated above, four intervenors objected, in one form or another, arguing that there is no basis for the requested authorization. We agree with the intervenors.

The decision to proceed with detailed engineering designs lies solely with the Company. Our approval of that decision would imply a pre-determination of prudence, which was not anticipated in the Order. The Order recognized the water pressure problem in Rosebrook's system and the Company's need for increased rates to address that issue. That Order, however, merely

established a framework for Abenaki to file for Step II, a separate and future rate increase, apart from the general rates approved in the Order.

The Commission stated that “Step II should be contingent on the Commission’s approval of the engineering design” and that the Commission was “not required at this time to determine if Step II is just and reasonable.” *Id.* The contingent approval and determination of whether the Step II investments are just and reasonable will be made when Abenaki files for recovery. It is only after the filing is made that the Commission may conduct the required prudency review and determine whether resulting rates are just and reasonable, pursuant to RSA 378:7 and RSA 378:28. *See Lakes Region Water Company, Inc., and Dockham Shores Estates Water Company, Inc.*, Order No. 26,272 at 4 (July 11, 2019) (the Commission is authorized to implement step adjustments based on its power to set just and reasonable rates, fares, and charges, pursuant to RSA 374:2, RSA 378:7, and RSA 378:28).

The evaluation of prudence occurs after the project is completed, costs have been incurred, and the Company seeks recovery of the investment. *See Public Service Company of New Hampshire*, Order No. 17,558 (April 18, 1985), 70 NH PUC 164, 246 (“[r]easonable rates on a just and reasonable rate base cannot be finally prescribed without a prudency determination of the capital investment in rate base.”); and *New Hampshire Electric Cooperative, Inc.*, Order No. 19,969 (October 30, 1990), 75 NH PUC 684, 687 (“[a] prudency review evaluates the prudency of historical sunk costs”).

While we understand the Company’s struggle to achieve agreement among the parties, we remind Abenaki that it is bound by its statutory obligation and it must proceed accordingly. RSA 374:1 specifically requires every public utility to furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.

We will not require Abenaki to file periodic reports with the Commission detailing the Company’s efforts to acquire state financing for the water pressure reduction projects. We remind

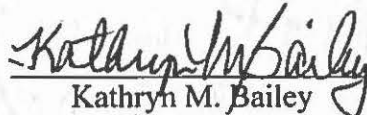
Abenaki, however, of its responsibility to act prudently in obtaining financing with reasonable terms and conditions. Furthermore, while a report may not be required, the company should in its due diligence take measures to ensure the lowest cost and most reasonable financing, including the investigation of state-provided financing.

Lastly, we agree with Abenaki's request to extend the deadline for filing for its Step II adjustment until December 31, 2019, in order to provide more time to make reasonable and prudent investment decisions.

Based upon the foregoing, it is hereby

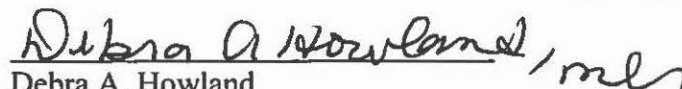
ORDERED, that Abenaki's request to extend the deadline of September 30, 2019, set in Order No. 26,205, for filing the Step II adjustment until December 31, 2019, is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of October, 2019.


Kathryn M. Bailey
Commissioner


Michael S. Giaimo
Commissioner

Attested by:


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