

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-165

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

Petition for Change in Rates

Order Denying Step II Deadline Extension

ORDER NO. 26,426

November 25, 2020

In this order, the Commission denies Abenaki Water Company, Inc.'s request to extend the Step II filing deadline.

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). On December 27, 2018, the Commission issued Order No. 26,205 approving a settlement agreement, which included, among other things, a rate increase 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. Order No. 26,205 set a September 30, 2019, deadline to file the Step II petition for recovery.

The Commission later extended the Step II filing deadline to December 31, 2019.

Abenaki Water Company, Inc. – Rosebrook Water System, Order No. 26,300 (October 23, 2019).

Order No. 26,300 reminded Abenaki of its statutory obligations, including its duty to provide safe and adequate water service, per RSA 374:1. *Id.* at 6-7.

On December 30, 2019, Abenaki filed its motion to again extend the Step II filing deadline, this time to December 31, 2020. Omni Mount Washington Hotel, LLC (Omni) filed its objection on January 7, 2020. Omni, along with the Office of the Consumer Advocate (OCA), the Bretton Woods Property Owners Association (BWPOA), and the Forest Cottages Association (Forest Cottages) are parties to this docket.

After postponements and request for continuations, a hearing was held on July 16, 2020.¹ Two days prior, the OCA filed a letter advising the Commission that it would not be participating in the hearing, and provided its position on Abenaki's request for Commission consideration.

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 Order Nos. 26,205 and 26,300.

II. POSITIONS

A. Abenaki

In its December 30, 2019, motion, Abenaki represented it had been unable to commence discussions with Omni "relative to easements, and consequently, it has been unable to finalize the engineering designs." Abenaki Motion to Extend Step II Filing Deadline, December 30, 2019, at 2. The Company requested that the deadline be extended until December 31, 2020, allowing the Company "more time to resolve these obstacles to its filing." *Id.*

¹ At hearing, Abenaki also addressed its efforts to resolve the water pressure problem at Rosebrook, pursuant to the Secretarial Letter issued on February 4, 2020.

At hearing, Abenaki retracted that argument, stating that its representation that it was Omni's obstruction that caused the delay "was not correct" and that the Company should "have filed [an] amended motion to reflect the facts" presented at the July 16, 2020, hearing. Hearing Transcript of July 16, 2020, (Tr.) at 129. At hearing, Abenaki instead took the position that the issuance of Order No. 26,300 on October 23, 2019, clarifying the scope of Step II, did not provide enough time to complete the engineering designs by the December 31, 2019, deadline. *Id.* at 26-27, 46, 84. The Company requested further extension of the deadline beyond December 31, 2020, and requested an extension up to twelve months from the issuance of the order, due to the availability of Horizons to complete the designs and the difficulty obtaining easements necessary for the design completion. *Id.* at 26-27, 45-46, 128.

Abenaki stated that extension of the deadline would allow the Company to obtain financing for the engineering design. *Id.* at 60. The Company stated that it "cannot afford ... the engineering fee that's going to be required for this project." *Id.* at 37. Abenaki further explained that potential lenders expressed "significant hesitancy" to finance the cost of the engineering designs, stating that the lenders "effectively want to see an order [extending the Step II deadline], or else they would have no confidence that we're going to be able to recover that outlay." *Id.* at 39. The Company also stated that it needs an order that it can seek cost recovery and pursue a financing because "[n]ot without assurance, by virtue of an order, will it dip into any line of credit." *Id.* at 126.

B. Omni

Omni objected to Abenaki's request to extend the deadline, arguing that production of the engineering designs is solely the Company's obligation. Omni Objection January 7, 2020, at 3.

Omni stated, contrary to Abenaki's representations in the Petition, Omni had nothing to do with Abenaki's failure to meet the original deadline. *Id.*

At hearing, Omni repeated its objection to the extension, and further stated that Abenaki did not raise the request for additional time due to difficulties in acquiring easements prior to the December 31, 2019, deadline. Tr. at 122. Omni contended that Abenaki did not meet the burden of a compelling argument to extend the deadline. *Id.* at 124.

C. Commission Staff

Commission staff members participating in this proceeding (Staff) urged the Commission to proceed with "extreme caution" in its consideration of Abenaki's request. *Id.* at 119. Staff's chief concern centered on the considerable amount of time that had passed since both approval of the Step II in late 2018, and the test year figures on which the step increase would be based. *Id.* The length of time from its Step II filing back to its test year might "not properly reflect the Company's [current] financial status ... which poses a risk to both the Company and to its ratepayers." *Id.* Staff further argued that implementation of a step increase years beyond the underlying rate case resembles single-issue ratemaking. *Id.* at 120.

D. BWPOA

BWPOA participated at the July 16, 2020, hearing, but did not offer a position.

E. OCA

The OCA, filed a letter before the hearing stating that the Commission "should simply inform the Company that there will be no Step II rate adjustment because the utility has failed to comply with the conditions imposed by Order Nos. 26,205 and 26,300." OCA Letter July 14, 2020, at 2. The OCA recommended that the Commission should communicate to the utility that the Company's damaged relationship with Omni is an "unacceptable situation." *Id.*

III. COMMISSION ANALYSIS

New Hampshire Administrative Rule, Puc 202.04 requires the Commission to grant a timely request for an extension of time if (1) the party making the request has demonstrated that circumstances would cause undue hardship or inconvenience under the otherwise applicable deadline, and (2) the extension would not unduly delay the proceeding or adversely affect the rights of any party. Abenaki has not met its burden. Therefore, its request is denied.

In its filing, Abenaki requested a second extension of the deadline to make its Step II filing until December 31, 2020. At hearing, the Company modified that request and sought an extension for an additional period up to 12 months from the date of this order. Abenaki stated that was the time required to negotiate easements and for Horizons, the firm tasked with completion of the engineering designs, to complete the work. Tr. at 129. The Company originally represented that Omni had delayed completion of the designs by the December 31, 2019, deadline. At hearing Abenaki changed its position, saying it required the extension because there was insufficient time between the end of 2019 and the issuance of Order No. 26,300, which clarified the scope of Step II. *Id.* at 129.

The Company further testified that it did not have sufficient funds to cover the cost of the engineering designs. *Id.* at 59. Abenaki stated that it had two possible options to cover the cost of the engineering designs, “petition the Commission for financing” or use the Company’s line of credit. *Id.* at 60-61. Abenaki argued that without the deadline extension, lenders would be hesitant to extend credit “given this regulatory lag climate” and “not having a recovery on the horizon.” *Id.* at 39, 126. The Company asserted that it would not “dip into any line of credit” without an order extending the deadline. *Id.* at 126.

We find Abenaki's arguments unpersuasive. We note that Order No. 26,300, clarified the Step II process, and stated that the "decision to proceed with detailed engineering designs lies solely with the Company." Order No. 26,300 at 6. The Commission stated that the prior order approving the Step II mechanism, Order No. 26,205, merely "established a framework for Abenaki to file for Step II, a separate and future rate increase." Order No. 26,300 at 6-7. Through those Orders, the Commission made clear that Abenaki bore complete responsibility in obtaining those engineering designs. The Commission stressed that it was the Company's duty to address the water pressurization problem, pursuant to RSA 374:1 (requiring every public utility to furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable). Order No. 26,300 at 7.

During the July 16, 2020, hearing, Abenaki repeatedly acknowledged Rosebrook's pressure problem, stating that "high pressures ... run the risk of ... catastrophic damage and personal – and bodily injury, if something does fail." Tr. at 13. It is incumbent on Abenaki to address this grave safety issue. The record, however, is devoid of any evidence of Abenaki's effort toward the completion of related engineering designs or any other effort to address the admittedly dangerous water pressure problem. Abenaki argued that insufficient time existed between the issuance of Order No. 26,300 on October 23, 2019, and December 31 of that same year to complete the designs. This argument would have been more persuasive if the Company actually provided evidence it performed work towards that goal in the interim period. Instead, the evidence shows the Company made no effort to move forward, and filed for an extension a day before the deadline, blaming Omni for its failure.

Abenaki had an extraordinary opportunity to recover at least a portion of the cost of the Horizon's engineering contract outside of a rate case if it acted expeditiously. The approval of

that provision of the Settlement Agreement was an incentive for Abenaki to act quickly to address the significant water pressure problem in the Rosebrook System. The Commission has already extended that opportunity once, yet Abenaki has failed to move forward to address the water pressure problem, risking customer and employee safety, while it seeks to obtain a prudence finding and guaranteed revenue recovery in advance of its actions. Public utilities and their managers are required, by RSA 374:1, to ensure safe and adequate service.

We are not persuaded by Abenaki's argument that it will be unable to obtain financing without guaranteed revenue recovery. It is standard Commission practice to grant authorization for utility financing without a rate recovery component. *See Unital Energy Systems, Inc.*, Order No. 26,391 (August 6, 2020) (Order authorizing financing up to \$35 million); and *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 26,390 (July 31, 2020) (Order authorizing financing up to \$200 million). The Commission specifically cautioned in those Orders, "[o]ur approval does not limit or preclude the Commission from reviewing in a future rate case, directly or indirectly, the prudence, use, and usefulness of any specific project funded with the financing proceeds. RSA 378:28." Order No. 26,390 at 6 and Order No. 26,391 at 8. As access to financing is a separate process from rate recovery in utility practice, and rate recovery cannot be determined until after the project is in service and a prudence review is complete, the financing cannot not be contingent upon a rate recovery guarantee. *See* RSA 378:28 (Commission shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful). As such, the Company's argument fails. Abenaki has failed to meet its burden to demonstrate that circumstances would cause *undue* hardship or inconvenience in this case.

We also find that a further extension of the Step II deadline would unduly delay the proceeding. The original order creating the Step II mechanism was published over 22 months ago. Abenaki's latest request would extend the deadline for at least an additional 12 months, exceeding two full years after the original September 30, 2019, deadline and more than four years after the end of the test year upon which we fixed the Company's rates. At this point in time, it would be more equitable to both the Company and its ratepayers for the Commission to address the issues raised here in a new rate case which would include updated financial figures. *See RSA 363:17-a* (the Commission shall be the arbiter between the interests of the customer and the utility). Accordingly, we deny Abenaki's request for an additional extension as it does not meet the standards required by Puc 202.04.

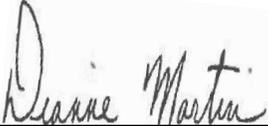
We note Abenaki has testified the Company has insufficient funds to resolve the pressure problem without outside financing, and that the Company so far has refused to use its line of credit for this purpose. We cannot, however, accept Abenaki's bald assertions that financial institutions are unwilling to lend the Company money, especially given the Company's misrepresentations regarding its reasons for delay in acting. Nor can we ignore what the Company itself acknowledges to be a serious pressure problem with the potential for catastrophic failure and bodily injury. Given the lack of progress and continuing nature of the problem, the Commission is seriously concerned with the Company's compliance with its statutory and regulatory requirements, including the obligation to provide safe and adequate service under RSA 374:1. We will therefore, issue an Order of Notice opening an investigation into the pressure problem in the Rosebrook system and the Company's resolution of that problem, including its efforts to fund the engineering and implementation of a solution.

Finally, we admonish Abenaki for its initial representation that Omni caused the Company's delay in completing the engineering designs and its significant delay in correcting the record. Going forward, Abenaki shall heed the following: 1) its duty to keep the Commission fully informed, per RSA 374:4; 2) its duty to file accurate information and corresponding responsibility to correct the record when an inaccuracy is discovered, per RSA 374:19; and 3) the consequences for willfully misleading the Commission, per Puc 202.08.

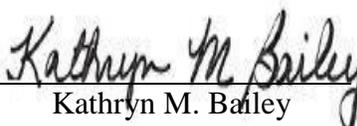
Based upon the foregoing, it is hereby

ORDERED, that Abenaki's request to extend the deadline of December 31, 2019, set in Order No. 26,300, for filing the Step II adjustment is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of November, 2020.

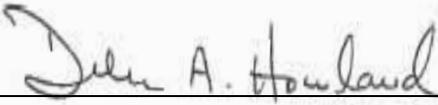


Dianne Martin
Chairwoman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

Service List - Docket Related

Docket#: 17-165

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