

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

**Hampstead Area Water Company
Lakes Region Water Company, Inc.
Abenaki Water Company, Inc.**

DOCKET NO. DW 18-026

OBJECTION TO OCA MOTION TO DISMISS

Abenaki Water Company, Inc. (“Abenaki”), by and through its counsel, N.H. Brown Law, PLLC, objects to the Office of the Consumer Advocate’s (“OCA”) Motion to Dismiss. In support of its objection, Abenaki states as follows:

1. Abanaki owns and operates regulated utilities in New Hampshire in the towns of Bow, Belmont, Bethlehem, Carroll, and the incorporated Township of Crawford’s Purchase.

2. Abanaki’s system in Bow provides service to 95 customers. Abenaki’s system in Belmont provides service to 158 water and 153 sewer customers. Abanaki’s system in Bethlehem/Carroll provides service to 410 customers. Each of these systems serve fewer than 600 customers. N.H. Code Admin. R. Puc 602.15.

3. The Bow, Belmont, and Bethlehem/Carroll water systems are stand-alone systems that are not interconnected with each other. N.H. Code Admin. R. Puc 602.15(b).

4. The Bow, Belmont, and Bethlehem/Carroll water systems have separate revenue requirements that are based on the value of the assets used to serve only those customers served by the water distribution system. N.H. Code Admin. R. Puc 602.15(c).

5. Accordingly, Abenaki’s Bow, Belmont, and Bethlehem/Carroll water systems are Small Water Systems within the meaning of Puc 602.15.

6. As the Commission is aware, it is the public policy of PART Puc 610 to provide an expedited ratemaking mechanism for small water distribution systems and to help reduce rate case expenses. In addition to providing an expedited proceeding “to recover the cost of any

capital additions, or any operating costs that are the result of any state or federal mandate” (which is akin to other cost-trackers for larger utilities like the Water Infrastructure Conservation Adjustment and Qualified Capital Project Adjustment Charge), PART Puc 610 charges the Commission with establishing a “generic return” at least once during any 12-month period. N.H. Code Admin. R. Puc 610.03(a).

7. Abenaki has not filed to increase its rates pursuant to the expedited process involving Puc 610.02, Puc 610.06, Puc 610.07, Puc 610.08, and Puc 610.09.

8. Rather, Abenaki has filed a full rate case for its Bethlehem/Carroll (Rosebrook) water system. That rate case has been docketed as DW 17-165. Abenaki is not aware that the Commission has provided a generic return to apply to Rosebrook’s rate case.

9. In lieu of the Commission issuing a generic return, Abenaki has taken steps to reduce rate case expenses by joining forces with Hampstead Area Water Company, Inc. (“HAWC”) and Lakes Region Water Company, Inc. (“LRWC”) to request that the Commission determine a generic return that reflects the risk associated with the size of small water utilities. That proceeding is the instant docket. Abenaki, HAWC, and LRWC also indicated in their petition that rulemaking may also be appropriate. For the reasons stated below, Abenaki believes it is appropriate and beneficial for the instant docket to proceed because Abenaki needs certain information for its rate case but Abenaki also recognizes that rulemaking may also be useful.

10. One argument the OCA makes in its motion to dismiss is that Abenaki, along with its joint petitioners, has not “demonstrated a present legal or equitable right”, made a claim that is “definite and concrete,” or alleged facts that are not hypothetical. Abenaki disagrees with the OCA’s assertion. Establishing the generic return is not for hypothetical purposes because Abenaki needs the return for its present, active rate case for Rosebrook, Docket No. DW 17-165. It is also important to note that the Commission’s own rule Puc 610.03(a) mandates a proceeding

to determine a generic return: “[a]t least once during any 12 month period...the commission shall establish a generic return to be applied to the equity invested in the small water system using the discounted cash flow methodology.” This generic return is not limited to just the expedited proceedings because it is an annual obligation of the Commission. Also, pursuant to Puc 610.04, a “small water system shall not be eligible for rate relief pursuant to this section within 2 years after the issuance of a final order under Puc 610 or Puc 1600.” This two-year rate cycle is consistent with RSA 378:7 which governs all rate changes. It has been over two years since Rosebrook has changed its rates, therefore, Abenaki can take advantage of this provision and it is not hypothetical.

11. Another argument OCA makes is that Docket No. DW 18-026 is single-issue ratemaking and that the Commission abhors single-issue ratemaking. This argument is unpersuasive. To state the obvious, in 1997, the legislature expressly authorized single-issue rate-related dockets for small water systems when it approved the Commission’s PART Puc 610 rules. In addition, the legislature expressly authorized rate changes under the expedited program to occur by order *nisi*. N.H. Code Admin. R. Puc 610.08(a)(1). The *nisi* further illustrates that the legislature authorized special treatment of small water systems. Because the legislature approved the Commission’s rules and expressly authorized single-issue ratemaking for small water systems, the determination of a generic return in the instant docket does not “utterly thwart” RSA 363:17-a and RSA Chapter 378 as the OCA contends.

12. The OCA asserts that the determination of the return must be done in the utility’s rate case. Abenaki considers this argument to be form over substance and impracticable. It is necessary to conduct the determination in the present docket for the following reasons. Because the generic return is intended to be a component of any small water utility’s revenue requirement and the revenue requirement affects a utility’s property, due process, RSA 541-A, and N.H.

Const. Art. 12 necessitate that the determination occur in an adjudicative docket. Otherwise, if no due process is afforded in a process where the Commission is determining a component of a small water system's revenue requirement, it could conceivably set confiscatory rates and violate N.H. Const. Art. 12 and *Federal Power Commission v. Hope Natural Gas, Co.*, 320 U.S. 591, 602 (1944) (The rate methodology must produce neither confiscatory nor exploitative rates.) Another reason why Abenaki believes the determination needs to occur in the instant docket is that it would be impracticable to have the adjudicative docket be a utility-specific docket. That is because all of the utilities affected by Puc 610.03 may not have an intervention by right in a utility-specific rate case like the Rosebrook rate case. RSA 541-A:32, I. As such, those utilities would have to be granted intervention under RSA 541-A:32, II in order to participate in the generic return issue. Abenaki posits the better solution would be to consider the generic return in the instant docket where any small water system may intervene, and then take notice of the return in the utility-specific dockets. For Abenaki, that would be in Docket No. DW 17-165.

13. The OCA makes other policy arguments disputing the appropriateness of proposed adders to the generic return formula. These arguments go to the merits of Abenaki's proposal. Because the policy arguments are irrelevant to whether the Commission lacks authority to continue this docket, Abenaki is not addressing them herein. Abenaki reserves the right to debate the public policy issues concerning any proposed changes to PART Puc 610 later in this proceeding.

14. The OCA suggests the appropriate forum for Abenaki and its joint petitioner's request is in rulemaking. Abenaki does not agree that this is an absolute outcome because there are problems with deciding the return in only a rulemaking. As stated above, the rules and statutes permit small water systems to address the generic return in an adjudicative proceeding. Further, if changes to Puc 610.03 are warranted, the waiver provisions of Puc 201.05 allow the

Commission to modify application of PART Puc 610. In light of Puc 201.05, Abenaki, HAWC, and LRWC could request that the Commission modify any generic return determined in Puc 610.03. The utilities would not have to wait for a rulemaking proceeding. It is important to note that Abenaki's expert, Pauline M. Ahern, CRRA, uses the core components of Puc 610.03: Discounted Cash Flow ("DCF") method, present value of stock and constant growth, comparative companies from Value Line Investment Survey, and a weighting of dividends to earnings. If Ms. Ahern's testimony is deemed to depart from Puc 610.03, the Commission does not need to resort to rulemaking to resolve the matter; Abenaki can simply request waiver of the rule and resolve the matter in its rate case.

15. Abenaki's position herein is not to say that no rulemaking is necessary. The Commission is free to either waive Puc 610.03 in an adjudicative proceeding (utility-specific or in the generic return proceeding) or change the rule in a rulemaking proceeding. Abenaki and its joint petitioners have proposed either forum. It is likely that all three utilities could benefit from rulemaking, however, given that Abenaki has a present rate case and the generic return is needed for the revenue requirement and the fact that rulemaking might take longer than Abenaki's rate case, rulemaking does not appear to be the preferred forum. For that reason, Abenaki seeks resolution of the generic return in an adjudicative proceeding in the instant docket.

16. In conclusion, for the above reasons, Abenaki objects to the OCA's motion to dismiss. Abenaki believes the Commission has the authority it needs to determine a generic return in this docket or modify the application of PART Puc 610 to Abenaki. The OCA's argument that the joint petitioner's request is hypothetical is misplaced because it overlooks that Abenaki's Rosebrook system meets the definition of a small water system under Puc 602.15, that the Commission has authority under Puc 610.03 to determine a generic return for such small water systems, and that Rosebrook has an active rate case in Docket No. DW 17-165. Abenaki,

therefore, has a present need for a return for determining its revenue requirement and its request is not hypothetical. Even if the return proposed and described in Abenaki's expert's testimony differs from the method stated in Puc 610.03, the matter does not necessarily need to be resolved in rulemaking. Abenaki can simply employ Puc 201.05 and request a waiver of the rule in its rate case or in the instant docket.

WHEREFORE, Abenaki hereby respectfully requests the Commission:

- A. deny the Office of the Consumer Advocate's motion to dismiss; and
- B. Grant such other and further relief as may be consistent with the public interest.

Respectfully submitted,

ABENAKI WATER COMPANY, INC.

By Its Attorney



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this objection has been forwarded by electronic means to the Docket-Related Service List posted on the Commission's web site for Docket No. DW 18-026.



Marcia A. Brown, Esq.

Date: April 23, 2018