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August 4, 2020

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-7319

Re: Docket No. DW 19-131
Omni Mount Washington Hotel LLC
Complaint Against Abenaki Water Company

Dear Ms. Howland:

I am writing to let you know that the Office of the Consumer Advocate (OCA) will not be participating in the August 5, 2020 hearing the Commission has scheduled in the above-referenced docket. As I understand the Commission's letter of July 31, 2020, the hearing will be in the form of oral argument about burden of proof and interpretation of the tariff. There do not appear to be any facts in dispute that would require testimony at this time. To the extent the Commission believes otherwise, the OCA is not in a position to offer testimony or evidence that would be material.

However, I am taking this opportunity to remind the Commission of the position taken by the OCA in our letter to the Commission of January 3, 2020 (Tab 12). At that time, we stated that the dispute at issue in this proceeding is properly viewed as a disagreement over the meaning of certain language in the applicable tariff of Abenaki Water Company. We noted that New Hampshire law requires the Commission to apply the rules governing statutory interpretation to a dispute over the meaning and effect of language in a utility tariff. *See In re Verizon New England, Inc.*, 158 N.H. 693, 695 (2009) (noting that such tariffs both "define the terms of the contractual relationship between a utility and its customers" and "have the force and effect of law").

Therefore, as we stated in January, the OCA supports the interpretation of the language in the tariff advocated by the complainant, Omni Mount Washington Hotel LLC (Omni). To repeat what we stated in January: The applicable language is ambiguous on the question of whether Abenaki or its customers are responsible for maintaining the service lines that run between the customers' property lines to their premises -- to the extent that such service lines antedate the most recently approved version of the tariff. If the tariff were a statute, a court would look to legislative history for insight into

how to resolve the ambiguity. *New England Backflow, Inc. v. Gagne*, 172 N.H. 655, 661 (2019). In the present context, the relevant history is the Commission proceeding that led to the adoption of the tariff language in question. The key insight is recounted at page 3 , note 4 of the Omni complaint (Tab 1) — particularly the explanation of Abenaki’s witness at hearing that the utility sought the tariff change because “when we have the opportunity, we want to move . . . curb stops to the property line.” In these circumstances, interpreting the tariff language so as to transfer ownership and responsibility for pre-existing lines buried beneath customer premises retrospectively would be absurd and unfair — not just to Omni but to all of the utility’s customers.

We have reviewed the legal memoranda filed by Omni and Abenaki on July 14, 2020 and their subsequent reply briefs. None of the arguments marshaled by Abenaki change our fundamental view that Abenaki was obliged to maintain the water main whose failure on Easter Sunday 2019 gave rise to the complaint filed by Omni and we believe that Abenaki has the burden to prove that it is not responsible for the repair of the water main. We continue to believe the complaint has merit and we agree with the legal arguments interposed by Omni. In the view of the OCA, the Commission should grant the relief requested by Omni and make clear to Abenaki that the utility’s poor relationship with its largest customer is inconsistent with the utility’s franchise obligation to all of its customers.

Thank you for considering the views of the Office of the Consumer Advocate. Please contact me if there are any questions or concerns. Consistent with the Commission’s standing directive in light of the pandemic, we are transmitting this letter via e-mail and are not filing any hard copies at this time.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Maurice Kreis".

D. Maurice Kreis
Consumer Advocate

Cc: Service List, via e-mail.