



THOMAS B. GETZ
Direct Dial: 603.230.4403
Email: thomas.getz@mcclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

November 2, 2020

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: DW 19-131, Omni Mount Washington, LLC
Complaint against Abenaki Water Company, Inc.
Follow-up to Record Request**

Dear Ms. Howland:

During the Public Utilities Commission's ("PUC" or "Commission") hearing on October 22, 2020, in the above-captioned proceeding, a question arose with respect to special contracts between Omni Mount Washington, LLC ("Omni") and Abenaki Water Company, Inc. ("Abenaki"). In particular, Commissioner Bailey asked whether the Commission should be looking at such special contracts and Chairwoman Martin directed that the parties file related documents and make any comments by November 2, 2020. Accordingly, Commission Staff filed Exhibit 34 comprising seven special contracts spanning the period from May 1, 1994 to April 30, 2005, signed by Mr. Satter on behalf of Rosebrook Water Company, Inc. ("Rosebrook") and MWH Preservation on behalf of the Mount Washington Hotel ("Hotel").

Omni agrees with Commissioner Bailey that the Commission should look at the information in its records with respect to special contracts and, for that matter, it should be looking closely at everything in the Commission's records concerning the history of Rosebrook that could shed light on this proceeding. In fact, Omni believes that RSA 365:4 and the Commission's rules at Puc 204.04 oblige the Commission to independently investigate issues related to Omni's complaint that Abenaki is responsible for the repair of the water main that is the subject of this proceeding.

With respect to the special contracts, Omni has reviewed Exhibit 34 as well as the petitions for special contracts filed by Rosebrook in Dockets No. DR 95-098 and DR 96-069, which Omni had earlier copied from the Commission's files. See Attachments A and B. In Omni's view, Exhibit 34 and the two petitions provide additional background supporting the position that the interactions between Rosebrook and the Hotel during that timeframe were arms-length. Neither Exhibit 34 nor the petitions, however, offer anything that would relieve Abenaki of its responsibility to repair the water main. To the contrary, each of the special contracts

November 2, 2020

Page 2

contains a provision (section 6 in Contract No. 1 and repeated in subsequent versions) that presumes Rosebrook ownership of plant and equipment on Omni property, stating that: "MWH agrees to permit representatives of the Company upon reasonable notice to enter the Hotel property for the purpose of *inspecting and maintaining the Company's plant and equipment* and for the monthly reading of meters." (Emphasis supplied.)

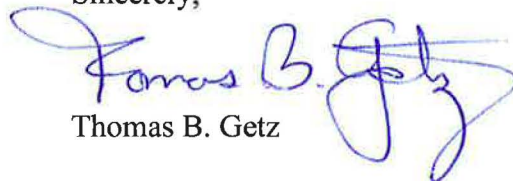
Omni also believes that the Commission should investigate the records in its files to consider two other issues addressed during the hearing on October 22, 2020. First, there was significant discussion of Abenaki's Continuing Property Records ("CPRs"), specifically, Exhibit 2, pp. 3 and 4. Mr. Vaughan suggested, with no apparent basis, that the CPRs Abenaki provided in discovery by Staff were created by representatives of an Omni predecessor. Based on a report filed by former Gas & Water Division Director Mark Naylor on December 23, 2013, Omni proposed in closing that Commission Staff, on the Commission's behalf, investigate the records in Docket No. DW 12-306 concerning the revised CPRs submitted by Rosebrook in that case. Correspondingly, Omni also countered Abenaki's allegations disputing the reliability of Rosebrook records in its July 28, 2020 Reply Memorandum.

Second, in closing, Abenaki argued that Omni had not advised Abenaki of Omni's plans to expand the Hotel. Omni responded that the Hotel's General Manager, Josh DeBottis, had an email exchange with Mr. Gallo about the expansion and other issues dating back to January, 2020. Abenaki objected that the Commission should not consider the email because it was not included as an exhibit in the proceeding. For the sake of clarity, Omni points out that the email in question was provided as Exhibit E to Omni's July 14, 2020 Memorandum of Law in this proceeding and that during the July 16, 2020 hearing in Docket DW 17-165, the Abenaki rate case, Mr. Gallo acknowledged the communication with Mr. DeBottis. (Tr. at pp. 56-57.)

Finally, while the Commission may conduct its investigation in such manner and by such means as it deems proper, its discretion is not unlimited. The adjudicative proceeding it initiated is subject to PART Puc 203, RSA 541-A, and the requirements of due process, which point Omni made previously in its July 28, 2020 Reply Memorandum and its July 31, 2020 Motion to Conduct Hearing as a Prehearing Conference.

Omni's response is filed electronically only, consistent with the Commission's March 17, 2020 suspension of the requirement to file paper copies. If you have any questions, please do not hesitate to contact me.

Sincerely,



Thomas B. Getz

TBG:sm

Enclosures

cc: Service List (DW 19-131)