



DEPARTMENT OF ENERGY

21 S. Fruit St., Suite 10
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August 31, 2021

Dianne Martin
Chairwoman
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket IR 21-024 Abenaki Water Company
Investigation into Water Pressure Issue in the Rosebrook Water System

Dear Chairwoman Martin:

Attached, as directed by the Commission in its Order of Notice issued in the above-captioned docket on February 19, 2021, is the Department of Energy Enforcement Division Safety Staff's report of its investigation of water pressure issues in the Rosebrook Water System owned and operated by Abenaki Water Company (AWC, or the Company).

The Commission's Order of Notice directed Safety Staff to conduct an investigation to review the Company's efforts to resolve the long-standing pressure issue and steps taken toward financing engineering designs for, and implementation of, a potential solution, as directed in prior orders of the Commission. Order of Notice in Docket IR 21-024 (February 19, 2021) at 2, *citing* Order No. 26,426 at 8, issued on November 25, 2020 in Docket DW 17-165.

The Safety Staff's investigation included the following elements:

- a review of prior filings submitted by the Company to the Commission;
- an evaluation of the safety and adequacy of the Rosebrook Water System based on document review and site visits;
- an historical review of solutions proposed by the Company's engineering consultants to address the long-standing pressure issue on the Rosebrook system;
- an evaluation of potential solutions to the pressure issue;
- field investigations, including discussions with Company personnel; and
- conclusions and recommendations for the Commission's consideration.

A number of attachments are included as part of the Report to provide the Commission with background and context for the investigation findings and recommendations.

Safety Staff notes the Company's pending motion for confidential treatment filed in Dockets DW 17-165 and DW 19-131 on October 1, 2019. That motion requests confidential treatment of specific maps and other documents submitted in one or both of the above-noted docket proceedings.

None of the subject documents are included in the attached report; nor were any of the attachments noted or marked as confidential by the Company. Under applicable New Hampshire and federal law, the Rosebrook water system is not considered “critical infrastructure.”

Specifically, RSA 91-A:5, VI governs exemptions from public disclosure for: “*Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life*” (emphasis added). Staff maintains that the information included in the attached investigation report does not meet the criteria for non-disclosure under RSA 91-A:5, VI, as it does not pertain to the preparation for or carrying out of emergency functions developed by local or state safety officials. Rather, the information in the Report and its attachments pertain to the general operation and maintenance of the Rosebrook water system.

Further, neither the Report nor its attachments convey specific detail with respect to facility accessibility, the carrying out of emergency functions, or information that is otherwise protected as critical infrastructure information under the Critical Infrastructures Protection Act of 2001 (CIPA), which defines “critical infrastructure” as follows:

...the term “critical infrastructure” means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters. 42 U.S.C. 5195c(e).

Nor does the Rosebrook system meet the applicable threshold for critical water system infrastructure under America’s Water Infrastructure Act (AWIA), as it serves only approximately 400 customers, according to the Company’s 2020 annual report filed with the Commission. By contrast, AWIA requires only those community water systems that serve 3,300 or more people to comply with certain risk and resilience assessments, develop emergency response plans, and certify compliance with the Environmental Protection Agency, the governing federal agency for critical infrastructure in the water and waste water sector.

Based on the above, it is Safety Staff’s position that the information included in the attached Report does not warrant confidential treatment, as the information is general in nature and high-level in detail without disclosing specifics of location, access, or operations of the Rosebrook water system. All attachments referred to in the text of the enclosed Report are available at the Department, should the Commission wish to review them.

Sincerely,

/s/ Lynn Fabrizio

Lynn Fabrizio
Hearings Examiner

cc: Service List (electronically)

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