

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

Docket No. DW 19-131

OMNI MOUNT WASHINGTON HOTEL, LLC

Complaint Against Abenaki Water Company, Inc.

**PARTIAL OBJECTION TO BRETTON WOODS PROPERTY OWNERS  
AND FOREST COTTAGES PETITION TO INTERVENE**

Abenaki Water Company, Inc. – Rosebrook Division (“Abenaki”), in accordance with RSA 365:1 and :2, RSA 541-A:32 and N.H. Admin. Rule Puc 203.13, hereby partially objects to the Bretton Woods Property Owners Association’s (“BWPOA”) intervention request. In support, Abenaki states as follows:

1. On July 24, 2019, Omni Mount Washington Hotel, LLC, (“Omni”) filed a complaint pursuant to RSA 365:1. Omni argued that an invoice for \$22,848.74 was the responsibility of Abenaki to pay. Notwithstanding *res judicata* and failure to request Commission modification of an order under RSA 365:28, Omni argued that the Commission’s 2016 order, Order No. 25,934 in Docket No. DW 16-448, approving Abenaki’s acquisition of the Rosebrook water system and the Commission’s subsequent approval of Abenaki’s compliance (tariff) filing was “unjustified”. Omni complaint at para. 5. Omni argued that deeds and easements entered into prior to Abenaki’s 2016 acquisition controlled over the Commission-approved terms and conditions in Abenaki’s tariff. Without evidence to support its contention, Omni alleged “it appears that Abenaki could take the similar position for Fairway Village and argue that its responsibilities end at Base Road.” Complaint at para. 11. Also without evidence, Omni argued that Abenaki has adopted a “new theory” and has reinterpreted the terms and conditions of its 2016 Commission-approved tariff. Complaint at para. 12.

2. On July 26, 2019, the Commission issued a letter to Abenaki stating that it was “treating this matter as a formal complaint pursuant to RSA 365:1 and :2.” Citing Puc 204.02(b), the Commission directed Abenaki to respond. Abenaki responded to Omni’s complaint on August 16, 2019.

3. On December 12, 2019, the Commission issued an order of notice setting a prehearing conference and allowing persons to seek intervention pursuant to Puc 203.17 (which cites RSA 541-A:32) and Puc 203.02 (concerning filing requirements).

4. On January 6, 2020, the Commission held a duly-noticed prehearing and thereafter, Staff and the parties met in a technical session to develop a procedural schedule to process Omni’s complaint. The BWPOA made an oral request for intervention and followed up with a written request dated January 13, 2020.

5. Pursuant to RSA 541-A:32, there are two ways petitioners can intervene in an administrative proceeding. First is by right. Pursuant to RSA 541-A:32, I(b), a petitioner must set forth “facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.” The New Hampshire Supreme Court has held that this means that a petitioner must identify a specific personal legal or equitable right that is at stake. *Duncan v. State*, 166 N.H. 630, 638 (2014). The second method is by permission. Pursuant to RSAS 541-A:32, II, upon “determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings”. *Public Service Company of New Hampshire*, Docket No. DE 10-122, Order No. 25,131 at 5 (July 20, 2010).

6. Similar to Omni, the BWPOA avers that “the new tariff 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 or common property’ to their premises.” Petition at

1. The BWPOA reiterates Omni's unsupported argument that "Abenaki could take a similar position as it did with Omni, and apply that to Fairway Village Association, which is part of the master BWPOA association." *Id.* The BWPOA then goes on to argue in support of Omni Mount Washington Hotel, LLC's ("Omni") complaint.

7. The BWPOA has not provided "facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law." BWPOA has not offered any facts that Abenaki has changed the terms and conditions in its tariff. In point of fact, with the exception of the rate schedules, the Commission's records document that the tariff remains the same as when Abenaki commenced service in 2016. Second, the BWPOA has not offered any "facts demonstrating" that Abenaki is reinterpreting its tariff. On the contrary, at the prehearing, Abenaki expressly denied that it is reinterpreting its tariff and affirmed that as to the common area of concern to the BWPOA, that Abenaki remains responsible for the water system assets. The BWPOA has only offered a hypothetical, speculative harm. It is well-settled law that hypothetical harm is insufficient to demonstrate 'specific personal legal or equitable right that is at stake'. *Duncan v. State of N.H.*, 166 N.H. 630, 641, 645 (2014) (judicial power is limited to deciding actual, and not hypothetical, cases) and (claims raised must be "definite and concrete touching the legal relations of parties having adverse interests," and must not be based upon a "hypothetical set of facts." (internal citations omitted)). For this reason, the BWPOA does not qualify for intervention as a matter of right.

8. As noted above, the Commission has discretion to allow a petitioner to intervene if it is in the interest of justice and would not impair the orderly and prompt conduct of the proceedings. Also as noted above, the Commission is processing Omni's complaint under RSA 365:1 and :2. Therefore, Omni bears the burden of proving its allegations and justifying the relief it seeks. Because the BWPOA has argued no more than what Omni has argued, it does not appear that the

BWPOA's presence will expand the scope of Omni's complaint. See, e.g., *Public Service Company of N.H.*, Docket No. DE 10-122, Order No. 25,131 (July 20, 2010) (Issues of concern to the intervention petitioner differed from the noticed issues and therefore petitioner failed to establish even a permissive basis for granting intervention); *Complaint of William Whalen*, Docket No. DT 14-102, Order No. 25, 679 (June 26, 2014) (Commission limited intervention to issues raised in complaint); and *Clean Power Development, LLC*, Docket No. DE 09-067, Order No. 25,075 (Feb. 24, 2010). For this reason, Abenaki does not object to permissive intervention. If, however, the BWOPA seeks to expand the issues beyond Omni's complaint, Abenaki reserves its right to object.

WHEREFORE, Abenaki respectfully requests the Commission:

- A. Deny the BWPOA's intervention request as a matter of right; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

ABENAKI WATER COMPANY, INC.

By Its Attorney,

Date: January 17, 2020

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this partial objection has been forwarded this day by electronic transmission to the Docket-Related Service List for DW 19-131.

Dated: January 17, 2020

Marcia A. Brown  
Marcia A. Brown