

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 17-165**

**ABENAKI WATER COMPANY, INC.**

**Request for Change in Rates**

**Order Denying Motion to Deem Rate Filing Deficient**

**ORDER NO. 26,157**

**July 13, 2018**

This order denies the motion to deem Abenaki Water Company's rate filing deficient and requires the parties to litigate the docket under the currently approved procedural schedule.

**I. PROCEDURAL HISTORY**

On October 23, 2017, Abenaki Water Company, Inc. (Abenaki or the Company), submitted a notice of intent to file rate schedules for its Rosebrook Water System Division (Rosebrook) customers and requested a waiver of certain rate case filing requirements. Rosebrook provides service to approximately 410 customers in the Town of Carroll. On December 7, 2017, Abenaki filed proposed permanent rate changes accompanied by written testimony of several witnesses. Abenaki requested for effect January 1, 2018, an increase in annual revenues of \$102,092 or 37.85 percent and an additional step increase of \$22,645 or 6.08 percent. The Office of Consumer Advocate (OCA) filed its letter of participation on December 19, 2017.

On January 5, 2018, the Commission issued Order No. 26,097, which suspended the tariff and scheduled a prehearing conference on January 25, 2018. Shortly thereafter, Abenaki filed a request for temporary rates effective January 1, 2018. The requested temporary rates would add \$65,452 or 24.23 percent to annual revenues.

The Omni Mount Washington, LLC (Omni), filed a petition to intervene on January 31, 2018; and the Bretton Woods Property Owners Association (Bretton Woods) and Rosebrook Association filed petitions to intervene on January 19 and 26, respectively. On January 25, 2018, following the prehearing conference, the OCA requested that the proceeding be put on hold pending receipt of Abenaki's Return on Equity (ROE) testimony. Abenaki followed with its own filed letter on February 6, 2018, mirroring the OCA's request.

On February 27, 2018, Abenaki, Hampstead Area Water Company, and Lakes Region Water Company jointly filed a petition for declaratory ruling or rulemaking concerning a standard ROE for small water systems. *See* DW 18-026 (ROE Docket). The petition included Pauline M. Ahern's supporting written testimony (Ahern ROE Testimony). Omni filed a motion to intervene in the ROE Docket on April 11, 2018.

On February 26, 2018, Abenaki requested that DW 17-165 be restarted using the Ahern ROE Testimony filed in the ROE Docket. On March 30, 2018, Commission Staff (Staff) proposed a procedural schedule and recommended that Omni, Bretton Woods, and Rosebrook Association be granted intervenor status. The Commission granted the interventions and approved the procedural schedule on April 11, 2018.

Abenaki and Staff filed a settlement on temporary rates on May 30, 2018, and a hearing followed on June 11, 2018. On June 1, 2018, Abenaki filed the same ROE testimony of Ms. Ahern that had been previously filed in the ROE Docket. On June 18, 2018, Omni filed a motion to deem the Abenaki rate filing deficient or to reject the late filed Ahern ROE Testimony.

## **II. POSITIONS OF THE PARTIES**

### **A. Omni**

Omni argues that under Commission rules, Abenaki was required to file all written testimony when it filed its rate case on December 7, 2017. *See* N.H. Code Admin. Rules Puc 203.05, Puc 203.06, Puc 1604.02. Omni argues that without all of the testimony, Abenaki's rate filing was deficient and should have been rejected. Omni claims that it is disadvantaged by the delay and confusion of Abenaki's delayed filing of both the Ahern ROE testimony and the temporary rate request. As such, Omni requests that this matter be restarted as of date of the filing of the Ahern ROE Testimony.

### **B. Abenaki**

By letter filed June 1, 2018, Abenaki argued that the Ahern ROE Testimony was germane to this Docket and that parties and Staff were not prejudiced by the late filing because discovery on the rate case had not yet started. Abenaki further claimed that the Ahern ROE Testimony was not available earlier because it had to be jointly funded by three water utilities. Abenaki also claimed that having obtained additional expert testimony during the course of this docket, it would be required to file that testimony as part of discovery in this case. *See* Puc 203.09(k). Finally, Abenaki noted that two rounds of discovery, technical sessions, and rebuttal testimony are all available to the parties and Staff under the approved procedural schedule, all of which afford ample opportunity to assess and rebut the Ahern ROE Testimony.

### **C. OCA**

Although OCA took no position on the Omni motion, it had earlier expressed concerns with the process of this docket, in light of Abenaki's filing of the Ahern ROE Testimony. *See* OCA Letters of January 25, and June 8, 2018.

### III. COMMISSION ANALYSIS

In considering Omni's motion to deem the Abenaki rate case filing deficient or to reject the late filed ROE testimony of Ms. Ahern, we are guided by our own rules and the requirement of a fair process.

#### A. Commission Rules on Rate Case Filing Requirements

In full rate case filings, Puc 1604.02(a)(3) requires a utility to file written direct testimony, while Puc 1604.08 directs utilities to include information on rate of return. Abenaki filed its petition for a permanent rate adjustment and included the written testimony, attachments, and exhibits of three witnesses: Donald J.E. Vaughan, CEO of New England Service Company; Pauline Doucette, Office Manager of New England Service Company; and Stephen P. St. Cyr, a consultant hired by Abenaki.

Mr. Vaughan stated that the company had used an ROE of 11.6 percent to support its permanent rate request. Vaughan Testimony at 4. Mr. Vaughan also stated the Company was collaborating with two other small water utilities to procure testimony from a cost of capital witness within the next 45 to 60 days. *Id.* at 5. We find that Mr. Vaughan's testimony in this case was sufficient to conform to our rules concerning rate case filings. Although, Mr. Vaughan did not provide a discounted cash flow analysis (DCF) to support his requested ROE, and he is not qualified as an ROE expert, he discussed the financial risks faced by the Rosebrook Division and claimed that those risks supported his suggested ROE of 11.6 percent.

We have not routinely required full DCF analysis or independent ROE expert testimony by small water companies in connection with their permanent rate cases. *See, e.g.*, DW 17-103, *West Swanzey Water Co., Inc.*, Order No. 26,105 (February 23, 2018) (ROE request of 9.6 percent); DW 15-209, *Lakes Region Water Co., Inc.*, Order No. 25,969 (November 28, 2016)

(ROE Request of 11.6 percent); DW 15-199, *Abenaki Water Co., Inc.*, Order No. 25,905 (June 3, 2016) (ROE Request of 10.75 percent); DW 12-306, *Rosebrook Water Co.*, Order No. 25,613 (December 23, 2013) (ROE Request of 11.25 percent); DW 12-170; *Hampstead Area Water Co., Inc.*, Order No. 25,519 (June 7, 2013) (ROE Request of 10.75 percent); DW 10-159, *West Swanzey Water Co., Inc.*, Order No. 25,203 (March 15, 2011) (ROE Request of 9.75 percent); DW 06-009, *Hanover Water Works Co.*, Order No. 24,759 (June 7, 2007) (ROE Request of 9.75 percent). Furthermore, our rules do not specifically require the filing of either a DCF analysis or ROE expert testimony. Instead, for small water companies we have relied on prior ROE determinations and Staff recommendations in evaluating ROE. We recognize the resource limitations small utilities face in presenting rate requests to the Commission, and we accommodate their attempts to present reasonable alternatives to a full DCF analysis and separate ROE expert testimony.

To the extent any party believed Abenaki's initial petition was deficient, that deficiency should have been raised shortly after the filing was made in December 2017. This would have allowed Abenaki to cure any deficiencies in the filing permitting the rate case to proceed. *See* Puc 203.05(b) (requiring Commission notice to petitioner that filing is deficient and delay of filing date for completed petition). Omni waited until June 18, 2018, to raise those concerns.

We do not find that the initial petition for permanent rates was deficient, and we will not adjust the effective date of the Company's permanent rate filing on that basis.

### **B. Fair Adjudicative Process**

We acknowledge the June 1, 2018, submission of Ahern's ROE testimony amended and supplemented Abenaki's rate case filing. We now consider the amendment's impact on the participants and Staff.

The Ahern ROE Testimony was first filed in the ROE Docket on February 27, 2018. Omni's motion to intervene in the ROE Docket was filed on April 11, 2018. Thus, as a participant in the ROE docket, Omni was put on notice as to the substance of the Ahern ROE Testimony well before the testimony was filed in this case.

The procedural schedule approved in this docket provided for the first round of data requests on the permanent rate filing, including the Ahern ROE Testimony, on June 21, 2018. The schedule also provides for a second set of data requests to the Company on July 26, 2018, followed by a technical session and settlement conference on August 23, 2018. The schedule does not have hearings until October 18, 2018, if there is a settlement, or November 7, 2018, if the issues are litigated.

As a result, Omni will have had two rounds of discovery (June 21 and July 26) and a technical session (August 23) in which to analyze the Ahern ROE Testimony which it has had since April 11, 2018. If Omni wishes to file its own testimony, it must do so by September 19, 2018.


We find that the approved procedural schedule provides adequate opportunity for Omni, and all other parties to participate and to present evidence in opposition to the Ahern ROE Testimony. As a result, we find the process fair to the parties and we will not reject the Ahern ROE Testimony.

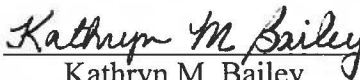
We instruct the parties to work collaboratively to accomplish the discovery in this case and to request a modification of the procedural schedule if parties require any additional discovery prior to hearings in this docket.

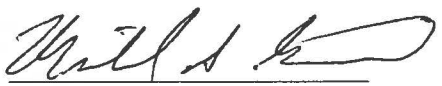
**Based upon the foregoing, it is hereby**

**ORDERED**, Omni's motion to deem the filing deficient or to reject late filed testimony is DENIED.


By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 2018.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director