

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 17-165**

**ABENAKI WATER COMPANY, INC.  
ROSEBROOK WATER SYSTEM**

**Petition for Change in Rates**

**Order Approving Change in Rates**

**ORDER NO. 26,205**

**December 27, 2018**

**APPEARANCES:** NH Brown Law, PLLC, by Marcia A. Brown, Esq., on behalf of Abenaki Water Company, Inc.; McLane Middleton, Professional Association, by Thomas B. Getz, Esq., on behalf of Omni Mount Washington, LLC; Paul Mueller on behalf of the Bretton Woods Property Owners Association; the Office of the Consumer Advocate, by D. Maurice Kreis, Esq., on behalf of residential ratepayers; and Christopher Tuomala, Esq., and F. Anne Ross, Esq., on behalf of Commission Staff.

In this order, the Commission approves a permanent rate increase for Abenaki Water Company's Rosebrook Water System, effective January 1, 2019. As a result, an average residential customer of the Rosebrook Water System, will experience an approximate \$6.32 per month, or \$75.84 annual increase.

**I. PROCEDURAL HISTORY**

Abenaki Water Company, Inc., is a New Hampshire public utility consisting of four systems, including the Rosebrook Water System (Abenaki-Rosebrook or Company). Abenaki-Rosebrook serves approximately 410 customers in the Town of Carroll.

On December 7, 2017, Abenaki-Rosebrook petitioned for a permanent rate increase that would result in additional annual revenues of \$102,232, or a 37.85 percent increase. Abenaki-Rosebrook also requested a step adjustment (Step I) that would result in a further increase in annual revenues of \$22,645, based on plant additions made after the Company's *pro forma* test year. The Office of the Consumer Advocate (OCA) filed a letter of participation on

December 19, 2017. The Commission suspended Abenaki-Rosebrook's proposed tariff and scheduled a prehearing conference and technical session for January 25, 2018. On January 18, 2018, the Company petitioned for temporary rates, seeking an increase in annual revenues of \$65,452, or 24.23 percent. Abenaki-Rosebrook sought an effective date of January 1, 2018, for the resulting permanent rates.

The Commission granted intervenor status to four parties: Bretton Woods Property Owners Association (Bretton Woods POA); the Rosebrook Association (Rosebrook); Omni Mount Washington, LLC (Omni); and Forest Cottages Association (Forest Cottages).

On August 31, 2018, the Commission approved a Settlement Agreement on Temporary Rates, setting the effective date for temporary rates as May 1, 2018. *See Abenaki Water Company, Inc.*, Order. No 26,171 at 1-3 (August 31, 2018) (containing a more detailed procedural history of this docket). Staff later filed the direct testimony of Dr. J. Randall Woolridge, a cost of equity consultant, and Utility Analyst Robyn J. Descoteau on September 19 and 28, 2018, respectively. A settlement conference followed on October 12, 2018.

On November 5, 2018, Staff filed a Settlement Agreement – Permanent Rates and Step Adjustments (Settlement Agreement), entered into by Abenaki-Rosebrook, Staff, and the OCA (Settling Parties). The Commission held a hearing on the Settlement Agreement on November 7. During the hearing, corrections to the Settlement Agreement were noted and made.

On December 6, 2018, Staff filed a letter stating that the Commission's Audit Division (Audit Staff) had completed its review of Abenaki-Rosebrook's post *pro forma* test year plant additions, which served as the basis for the Step I adjustment. Based on the audit findings, Staff's letter recommended that certain modifications be made to the proposed Step I adjustment and to the resulting customer rates proposed in the Settlement Agreement. Abenaki-Rosebrook filed a letter stating that it accepted Staff's position.

Six weeks after the hearing on the Settlement Agreement, on December 19, Bretton Woods POA, Rosebrook, and Forest Cottages filed a letter stating they did not support the Settlement Agreement.<sup>1</sup> Abenaki-Rosebrook's petition and subsequent docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-165.html>.

## **II. SUMMARY OF THE SETTLEMENT AGREEMENT**

The Settlement Agreement recommends a general rate increase for Abenaki-Rosebrook. The following reflects the Settlement Agreement's revised terms, submitted as Exhibit 11 in this docket.

### **A. Revenue Requirement and Rate Increase, Including Step I**

Abenaki-Rosebrook would charge rates sufficient to yield a permanent revenue increase of \$79,779, or 28.87 percent. The permanent revenue increase consists of a \$64,736 revenue increase based on a *pro forma* test year ending September 30, 2017, and an additional \$15,043 increase from the Step I adjustment, which is based on plant additions that were placed in service subsequent to the *pro forma* test year. The Settlement Agreement provides that Audit Staff would review those plant additions and issue a final Step I report. If the report revealed a material difference between the assets' actual underlying costs and the asset costs included in the proposed Step I adjustment, Staff would recommend an appropriate alteration to Step I for approval by the Commission. That recommendation is discussed below.

The permanent rate increase would be collected on a service-rendered basis beginning January 1, 2019, and would be reconcilable back to the approved effective date for temporary

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<sup>1</sup> The record in this matter includes a letter from Abenaki-Rosebrook's counsel dated December 3, stating that the Company did not object to the Commission considering a position statement from Bretton Woods POA, Rosebrook, and Forest Cottages as if the position statement had been made at the hearing. We assume the December 19 letter contains the same comments that were referenced in counsel's letter.

rates, May 1, 2018, also on a service-rendered basis. The revenues derived from the Step I adjustment, however, would not be eligible for reconciliation.

### **B. Cost of Equity and Pro Forma Capital Structure**

In determining the revenue requirement, the Settling Parties used an ROE of 9.95 percent, which was based on information contained in two surveys published by Regulatory Research Associates (RRA).<sup>2</sup> The ROE Settlement averaged the results of the two surveys to derive a base ROE percentage. It then added an additional 50 basis points to recognize rate case expense savings arising from Abenaki-Rosebrook's agreement to settle rather than to litigate ROE. The calculation of the stipulated ROE percentage is as follows:

Average Authorized ROE – Water Utilities: 1 <sup>st</sup> Half, 2018 <sup>3</sup>	9.41%
Median Authorized ROE – Gas Utilities: 1 <sup>st</sup> Half, 2018 <sup>4</sup>	<u>9.50%</u>
Average (rounded down)	9.45%
Add: ROE Litigation Replacement Premium	<u>0.50%</u>
Stipulated ROE	<u>9.95%</u>

The Settlement Agreement also provided a *pro forma* capital structure for Abenaki-Rosebrook of 40 percent debt and 60 percent equity. The Settlement Agreement calculation of the Rate of Return (ROR) for the Company's permanent rate increase is as follows:

	<u>Component Percentage</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Common Equity	60.00%	9.95%	5.97%
Long-Term Debt	<u>40.00%</u>	3.98%	<u>1.59%</u>
Total	<u>100.00%</u>		<u>7.56%</u>

### **C. Commission Investigative Proceeding on ROE Rulemaking**

The Settlement Agreement provides for a docket to be opened by the Commission within 45 days of the date of the order approving the Settlement Agreement to investigate rulemaking

<sup>2</sup> These two surveys include the average of authorized ROE's for water utilities during the first six months of 2018 and the median of authorized ROE's for gas utilities during the first six months of 2018.

<sup>3</sup> *RRA Water Advisory: Major Rate Case Decisions, January-June 2018*, at 4 (July 27, 2018). The average authorized ROE for water utilities was used because a median authorized ROE percentage was not provided.

<sup>4</sup> *RRA Regulatory Focus: Major Rate Case Decisions – January-June 2018*, at 6 (July 17, 2018).

for establishing an ROE methodology for all “small-sized” water utilities similar to Abenaki Water Company, Inc.

**D. Customer Rate Impact and Cost of Service Study**

The proposed revenue requirement would result in a new consumption rate of \$6.30 per 1,000 gallons of water, a \$0.97, or 18.20 percent, increase over the present volumetric rate of \$5.33 per 1,000 gallons of water.

The fixed meter charges would be adjusted as follows:

<b>Meter Size</b>	<b>Current Rate</b>	<b>Proposed Rate</b>	<b>Percent Increase</b>
5/8”	\$ 9.91	\$ 15.00	51.36%
5/8” x 3/4	\$ 9.91	\$ 15.00	51.36%
1”	\$ 32.69	\$ 49.48	51.36%
2”	\$ 106.00	\$ 201.40	90.00%
3”	\$ 230.83	\$ 438.58	90.00%
6”	\$ 924.29	\$ 1,756.15	90.00%

For an average residential customer using approximately 15,720 gallons of water annually the average annual bill would increase from \$202.68 to \$279.12, or \$76.44, an additional \$6.37 per month.

In the Settlement Agreement, Abenaki-Rosebrook agreed that as part of its next general rate increase filing, it will include a cost of service study pursuant to N.H. Code Admin. Rules Puc 1604.01(a)(7). That study will help Abenaki-Rosebrook, Staff, the OCA, and interested ratepayers evaluate and determine whether improvements should be made to the Company’s rate design.

**E. Second Step Adjustment**

The second step adjustment (Step II) is a rate increase based on the cost of engineering designs to fix a significant pressure problem within the Abenaki-Rosebrook water system. The Company contracted Horizons Engineering, Inc. (Horizons), to develop engineering designs for

approximately \$100,000. Abenaki-Rosebrook anticipates that the designs will be completed by the third quarter of 2019.

The Settlement Agreement provides for the Company's recovery of no more than \$100,000 of engineering design costs through Step II. A Step II request must be filed no later than September 30, 2019. That would result in an estimated additional \$9,986 in revenue, based on the maximum allowed cost of \$100,000, financed by debt, at a 5.00 percent annual interest rate. The revenues derived from the Step II adjustment would not be eligible for reconciliation back to the previously approved temporary rates.

The Step II adjustment is contingent on Commission approval of the engineering designs, the scope of which would be litigated in the present docket. The Settling Parties agreed to develop, and submit for Commission approval, a procedural schedule for that litigation within 10 days of the date of the order approving the Settlement Agreement.

**F. Rate Case Expenses**

The Settlement Agreement would allow Abenaki-Rosebrook to recover its prudently incurred expenses for this proceeding through a surcharge. The Company would be required to file its final expenses, and appropriate documentation, no later than 30 days from the date of the order approving the Settlement Agreement.

**G. Temporary Rate Recoupment**

Abenaki-Rosebrook would file, no later than 30 days from the date of the order approving the Settlement Agreement, its calculation of the reconciliation between temporary rates, effective May 1, 2018, and permanent rates, effective January 1, 2019, and its proposed surcharge for recoupment, pursuant to RSA 378:29.

### III. POSITIONS OF THE PARTIES

#### A. The Settling Parties

The Settling Parties believe that approval of the Settlement Agreement would result in just and reasonable rates and asked for Commission approval. In addition, Assistant Consumer Advocate and Market Policy Director, Dr. Pradip Chattopadhyay, testified that, when compared to similar companies' ROEs and circumstances, the ROE contained in the Settlement Agreement falls within the range of reasonableness of just and reasonable rates. Hearing Transcript of November 7, 2018 (Tr.), at 34, 36-38.

#### B. Omni

Omni objected to the ROE, the ROE adder, and the revised capital structure included in the Settlement Agreement. *Id.* at 122-123.

#### C. Bretton Woods POA, Rosebrook, and Forest Cottages

At hearing, Bretton Woods POA concurred with Omni's position, and also objected to the Settlement Agreement's proposed rate design. *Id.* at 123. Neither Rosebrook nor Forest Cottages signed the Settlement Agreement, nor did either party attend the Settlement Agreement hearing.

Bretton Woods POA, Rosebrook, and Forest Cottages objected to the Settlement Agreement via letter filed on December 19, 2018, as noted above. The letter stated four grounds of objection to the Settlement Agreement: (1) exclusion of Dr. J. Randall Woolridge's proposed 9.01 percent ROE; (2) use of a *pro forma* capital structure for Abenaki-Rosebrook, which creates a greater imputed ROE; (3) changes to the rate design, which cause an excessive increase in fixed rates rather than differentiating high use customers through usage rates; and (4) exclusion of issues raised by the residential homeowner intervenors.

#### **IV. AUDIT OF STEP I ADJUSTMENT AND STAFF RECOMMENDATION**

In accordance with the Settlement Agreement, Audit Staff submitted a final report of its review of the assets and other costs associated with the proposed Step I adjustment. Audit Staff recommended that the costs of the assets associated with Step I be reduced by \$5,820. On December 6, 2018, Staff filed a letter with the Commission which recommended, based on Audit Staff's findings, that the increased annual revenues resulting from Step I should be \$13,727 above the *pro forma* test year water revenues. With that adjustment, Staff recommended a revised annual revenue increase of \$78,464, or 28.40 percent. The Step I reduction did not affect the proposed monthly meter rates; however, Staff recommended a 3 cent reduction in the proposed consumption charge, to \$6.27 per 1,000 gallons of water. That recommendation would increase Abenaki-Rosebrook's current volumetric rate of \$5.33 per 1,000 gallons of water by \$0.94, or 17.64 percent.

By letter dated December 10, 2018, Abenaki-Rosebrook confirmed that it accepted Staff's recommendation.

#### **V. COMMISSION ANALYSIS**

RSA 378:28 provides the standards by which the Commission sets permanent rates. Under that statute, the Commission "shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful." *Id.* Further, the Commission sets rates after a finding that the rates provide the Company with "a just and reasonable rate of return." *Id.*

In determining whether rates are just and reasonable, the Commission must balance the customers' interest in paying no higher rates than are required against the investors' interest in obtaining a reasonable return on their investment. *Appeal of Eastman Sewer Company, Inc.*,



138 N.H. 221, 225 (1994). In this way, the Commission fulfills its duties as an arbiter between the interests of customers and those of a utility's owners. RSA 363:17-a. The Commission exercises its discretion and judgment in striking this balance. *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606, 634-36 (1986).

The proposed Settlement Agreement is the product of compromise among Abenaki-Rosebrook, Staff, and the OCA pertaining to several technical issues. The areas of agreement include a revenue requirement and rate increase, rate design, an appropriate and equitable ROE and *pro forma* capital structure, and two step increases. The Commission has previously approved resolutions of rate cases that include step adjustments. *See Hampstead Area Water Company, Inc.*, Order No. 26,165 at 6 (July 31, 2018) (approving settlement agreement between the petitioner, the OCA, and Staff providing for permanent rate increase and two step adjustments). The Settlement Agreement here strikes a balance between the interests of shareholders and ratepayers.

With respect to rate of return, "the commission is bound to set a rate of return that falls within a zone of reasonableness, neither so low as to result in a confiscation of company property, nor so high as to result in extortionate charges to customers. *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. at 635. Noting Dr. Chattopadhyay's testimony, we find that the ROE of 9.95 falls within the range of reasonableness for the Company's earnings. Further we find that the *pro forma* capital structure of 40 percent debt and 60 percent equity represents a reasonable capital structure for Abenaki-Rosebrook given the Company's current financial situation, and that it was the product of negotiations involving Staff and the OCA, resolving other issues with the Company. With respect to rates, as the Company's witness testified, even after these rate increases the annual bill for residential customers will be "very low," in comparison to other small water utilities in the state. Tr. at 101-102. Based on the

entire record, the Commission finds the proposed ROE, *pro forma* capital structure, resulting permanent revenue requirement, and rates, to be just and reasonable and approves them.

The Settling Parties agreed that prior to an increase in rates pursuant to Step I, Audit Staff would examine the underlying costs associated with the capital additions upon which Step I is based. The audit report recommended that the costs of the assets associated with Step I be reduced by a total of \$5,820 resulting in a Step I revenue requirement of \$13,727. Staff further recommended a total annual revenue increase of \$78,464 (rounded up), which includes the Step I adjustment and the annual permanent rate increase of \$64,736. The annual revenue increase of \$78,464 results in a total annual revenue requirement of \$354,799, representing a 28.40 percent increase over Abenaki-Rosebrook's *pro forma* test year water revenues of \$276,335.

Based on the testimony at hearing, we find the investments made for recovery through Step I to be prudent, used, and useful. Noting the Company's agreement with Staff's recommendation, we also find the modified Step I adjustment reasonable. Thus we find that the Step I adjustment and the resulting rates as recommended by Staff are just and reasonable, and we approve them.

The Settling Parties agreed that Step II should be contingent on the Commission's approval of the engineering design. Therefore, we are not required at this time to determine if Step II is just and reasonable. We will wait for the results of the discovery and discussions between Staff and the parties involving the scope of the engineering design to address the water pressure problem, including discussions regarding the investigation into alternative solutions and a demonstration that the proposed solution is the most cost effective means to address the problem. We adopt the provisions agreed to by the Settling Parties that a Step II request must be filed no later than September 30, 2019, and that any such request will not exceed \$100,000.

To assist in the Commission's consideration of the issues raised by Step II we direct the Company to submit a report, within 10 days from this order, addressing three issues concerning Abenaki-Rosebrook's water pressure problem: (1) the solutions considered by the Company before contracting with Horizons; (2) the other possible options available to address the water pressure problem; and (3) the reasons supporting the construction of a new water tank, as proposed by Horizons, as the best and most cost effective solution.

We also direct Staff and the parties to develop a procedural schedule regarding discovery and discussions pertaining to the scope of the engineering design, and submit it to the Commission for approval, within 10 days of this order. The result of the discovery and those discussions will form the basis for the Commission's consideration of the engineering design and subsequent Step II.

We are not required at this time to decide whether or how Abenaki-Rosebrook's investment in a solution to the water pressure problem, including a proposed water tank, should be recovered from ratepayers. We note that full cost recovery in any plant investment, especially a \$3 million water tank addition, is not guaranteed and ultimately the investment must be found prudent for such recovery to occur. Abenaki-Rosebrook is permitted to request recovery of an investment, and nothing in this decision precludes any party from taking an opposing position with regard to such a request.

At hearing, both Omni and Bretton Woods POA objected to the proposed ROE of 9.95 percent, which was greater than Staff's cost of equity expert Dr. Woolridge's recommendation of 9.01 percent. While considering this objection, we note and agree with Staff's testimony that the 9.95 percent ROE is reasonable as it was partly based upon the avoidance of full scale litigation and a resolution of other issues among the Settling Parties. Tr. at 60. Our approval of the 9.95 percent ROE is bolstered by Dr. Chattopadhyay's testimony as previously discussed.

Both Omni and Bretton Woods POA objected to the *pro forma* capital structure as well. We acknowledge that it was a product of negotiations among the Settling Parties, and derived partly in recognition of Abenaki-Rosebrook's improvement of a previously troubled water system. *Id.* at 66. The *pro forma* structure is also an acknowledgement that Abenaki-Rosebrook is no longer a water utility with an all equity capital structure, which benefits customers. *Id.*

Bretton Woods POA further objected at hearing to the proposed rate design. While considering this objection, we note that the Company agreed to a cost of service study to be implemented during the next rate proceeding to address such concerns. While considering the impact of the proposed rate increase, we further note the agreed-upon rates are not as high as originally requested by the Company, and that the rates are still considered quite low. *Id.* at 102.

While we are not obligated, we will respond to the late filed objections by Bretton Woods POA, Rosebrook, and Forest Cottages. We note that the three homeowner's associations were all granted intervenor status and had every opportunity to voice their concerns during the hearing process, but Rosebrook and Forest Cottages chose not to do so. Regardless, their first three arguments have been addressed above, having been introduced into the record by Bretton Woods POA at the November 7 hearing. Their final argument, that the Settling Parties did not consider their comments or considerations in crafting the Settlement Agreement, is not persuasive. The three housing associations notified the Settling Parties that they would not sign the Settlement Agreement. We will not fault parties to a settlement agreement for not modifying their settlement based on the requests of parties that will not join as signatories.

Finally, the Commission has already approved a request to open a docket to investigate rulemaking for establishing an ROE methodology for all "small-sized" water utilities similar to Abenaki Water Company, Inc. See *Hampstead Area Water Company, Inc.*, Order No. 26,195 at 7-8 (November 28, 2018) (opening the docket to investigate rulemaking 45 days from

November 28, 2018). We note that our approval was for an investigation into rulemaking, not the beginning of the rulemaking process under RSA Ch. 541-A.

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

**ORDERED**, that the terms of the Settlement Agreement – Permanent Rates and Step Adjustments are adopted by the Commission and **APPROVED**, and Abenaki-Rosebrook shall commence collection of the resulting rates, as adjusted by Staff's recommendation regarding Step I, on a service-rendered basis on January 1, 2019, subject to the terms of the Settlement Agreement; and it is

**FURTHER ORDERED**, that Abenaki-Rosebrook shall submit a report, and supporting documentation, with the Commission within 10 days of the date of this order, that addresses three issues concerning possible solutions to the system's water pressure problem: the solutions considered before contracting with Horizons; the other possible options available to address the water pressure problem; and the reasons supporting the construction of a new water tank, as proposed by Horizons, as the best and most cost effective solution; and it is

**FURTHER ORDERED**, that the request for recovery of engineering design costs will not exceed \$100,000; and it is

**FURTHER ORDERED**, that the Settling Parties, and intervenors if available, shall establish a proposed procedural schedule, for the purpose of conducting discovery related to the scope of the engineering study in Step II and possible alternative solutions to Abenaki-Rosebrook's water system pressure problem, and submit for Commission approval within 10 days from the date of this order; and it is

**FURTHER ORDERED**, that Abenaki-Rosebrook shall conduct a cost of service study, to evaluate and determine whether a revised rate design would be more appropriate for its

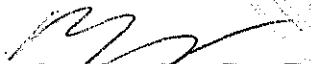
customers, as a part of its next general rate increase filing, pursuant to Puc 1604.01(a)(7); and it is


**FURTHER ORDERED**, that Abenaki-Rosebrook shall submit properly annotated tariff pages consistent with the Settlement Agreement and this order with the Commission within 15 days of the date of this order; and it is


**FURTHER ORDERED**, that Abenaki-Rosebrook shall file within 30 days of the date of this order, documentation of the difference between temporary rates which went into effect on May 1, 2018, and permanent rates as finally determined herein, and file a proposed surcharge for recovering the difference from customers; and it is

**FURTHER ORDERED**, that Abenaki-Rosebrook shall file its final rate case expense request pursuant to PUC 1905.02, and the terms of the Settlement Agreement, no later than 30 days from the date of this order.


By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of December, 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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Lori A. Davis  
Assistant Secretary