

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

DW 18-026

**ABENAKI WATER COMPANY, INC.,
HAMPSTEAD AREA WATER COMPANY, INC.
and LAKES REGION WATER COMPANY, INC.**

Return on Equity Petition

Response to Motion to Dismiss

Omni Mount Washington, LLC (“Omni”) hereby joins in the Motion to Dismiss filed by the Office of Consumer Advocate (“OCA”) on April 11, 2018, in the above-captioned proceeding.

1. On February 27, 2018, Abenaki Water Company, Inc. (“Abenaki”), Hampstead Area Water Company, Inc. (“Hampstead”), and Lakes Region Water Company (“Lakes Region”) (collectively, “Water Utilities”) jointly filed a petition for a declaratory ruling or, in the alterative, a rulemaking to establish a premium that would be added when determining the rates and authorized return on equity for small satellite water systems serving fewer than 3,330 residents.

2. On April 11, 2018, the OCA moved to dismiss, arguing that the Water Utilities had not met the standard for declaratory orders and that the Public Utilities Commission (“Commission”) lacked authority to adopt a premium return on equity through rulemaking. The OCA also opposes the request as single-issue ratemaking.

3. On April 16 and 19, 2018, respectively, Lakes Region and Hampstead filed objections to the OCA’s Motion to Dismiss. Lakes Region argues that a declaratory ruling is appropriate because it is seeking a ruling as to the “specific applicability” of RSA 378:27 to set rates based on a just and reasonable rate of return on rate base. Objection, p. 4. It also contends

that a rulemaking is appropriate because it “has not requested any change to its rates.” Objection, p. 5. Hampstead concurs with Lakes Region.

4. With respect to the request for a declaratory ruling pursuant to Puc 207.01 and the Administrative Procedures Act, RSA Chapter 541-A, a declaratory ruling is defined in RSA 541-A:1, V, as a determination of “the *specific applicability* of any statutory provision or of any rule or order.” (Emphasis supplied.)¹ The purpose of an agency declaratory ruling is to provide dependable guidance as to the meaning of a statute or rule in a way that is non-coercive, i.e., does not impose penalties or liabilities, which in this case means without raising rates to water customers. See, *The Agency Declaratory Judgment*, Emily S. Bremer, 78 Ohio State Law Journal 1169, 1182 (2017).

5. Lakes Region, however, poses the Water Utilities’ request as seeking a ruling as to the “specific applicability” of RSA 378:27, when there is no doubt whatsoever as to the applicability of that statute to the Water Utilities. The Commission could, in theory, declare for purposes of providing guidance to the Water Utilities (if any were really needed) that they may pursue a premium return in a rate case pursuant to RSA 378:27, but the Commission lacks authority to go further and actually determine the propriety and level of such a premium through a declaratory ruling that would lead to an enforceable rate increase against customers. Lakes Region’s attempt to shoehorn its request into a declaratory ruling contorts the meaning of the phrase “specific applicability” and is contrary to the purpose of such a ruling.

¹ See also a declaratory judgment in Superior Court under RSA 491:22, with respect to which the New Hampshire Supreme Court has said: “Where a plaintiff seeks a declaratory judgment, he is not seeking to enforce a claim against the defendant, but rather a judicial declaration as to the existence and effect of a relation between him and the defendant.” The Court also said: “The remedy of declaratory judgment affords relief from uncertainty and insecurity created by a doubt as to rights, status or legal relations existing between the parties.” *Benson v. N.H. Ins. Guaranty Assoc.*, 151 NH 590, 593 (2004).

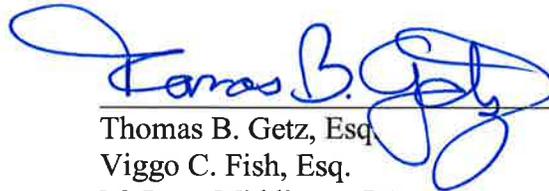
6. With respect to the request for a rulemaking, it is at best premature. While the Water Utilities may be seeking in good faith a resolution to a legitimate issue, a rulemaking is not appropriate to the actual relief they seek. It is difficult to envision, moreover, how such a rule would be drafted in a manner that would meet with the approval of the Joint Legislative Committee on Administrative Rules. Finally, such a result would unfairly impact the Water Utilities' customers and other similarly-situated customers by judging facts relevant to pending rate cases outside of those cases, thus depriving customers of effective notice and an opportunity to respond.

7. The Water Utilities ask the Commission to determine that they are entitled, based on the testimony of Pauline M. Ahern, to a premium return on equity based on a formula applied to the circumstances of the individual companies. Despite their efforts to pose their request as a request for declaratory or generic relief through rulemaking, the Water Utilities are asking the Commission to adjudicate facts that could lead to increased rates for customers, which should be the subject of an adjudicative proceeding with appropriate customer protections.

WHEREFORE, Omni respectfully requests that the Commission grant the OCA Motion to Dismiss as described above.

Respectfully submitted,

Omni Mount Washington, LLC
By Their Attorneys

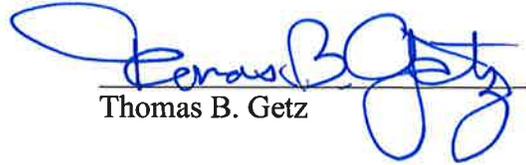


Date: April 23, 2018

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Certificate of Service

I hereby certify that a copy of the foregoing Petition has on this 23rd day of April, 2018, been sent by email to the service list in DW 18-026.


Thomas B. Getz