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August 28, 2019

**Via Electronic Mail and Hand Delivery**

NHPUC 28AUG'19PM4:13

Ms. Debra A. Howland  
 Executive Director  
 New Hampshire Public Utilities Commission  
 21 South Fruit Street, Suite 10  
 Concord, NH 03301

**Re: DW 19-131, Omni Complaint Regarding Water Main Break  
 Omni Response to Abenaki's Reply**

Dear Ms. Howland:

On August 16, 2019, Abenaki Water Company, Inc. (Abenaki) replied to Omni Mount Washington Hotel LLC's (Omni) complaint regarding Abenaki's failure to pay AB Excavating Inc. to repair the water main break that occurred on April 21, 2019, to the 8-inch water main that serves the Mount Washington Hotel and several surrounding buildings. Abenaki erroneously asserts that it is not liable to AB Excavating Inc. because of a tariff change with respect to the definition of service pipes that was made when Abenaki acquired the Rosebrook Water System (Rosebrook).

Tellingly, Abenaki's reply does not directly dispute that it acquired the water main that serves the Mount Washington Hotel when it acquired Rosebrook but relies instead on the isolated truism that "New Hampshire law is well settled that the relationship between a utility and its customers is set by the utility's tariff" in an attempt to avoid responsibility. Abenaki's reply as to the general nature of a tariff is correct so far as it goes but is insufficient under the circumstances.

Among other things, Abenaki neglects to recognize the basic fact that the tariff provision regarding service pipes is written in the future tense. Accordingly, the tariff change, by its plain language, governs the allocation of responsibilities between the Company and customers for those connections made after the tariff was changed, i.e., August 9, 2016, but it does not apply retroactively and it certainly cannot override the easements and deeds evincing the property rights and interests that Abenaki purchased when it acquired Rosebrook. Moreover, insofar as there is any ambiguity as to how the tariff should be applied, the attached exchange between Commissioner Bailey and Mr. Vaughan makes clear his understanding and intent that changes

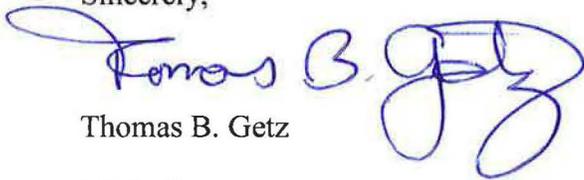
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would only be made prospectively when the opportunity to make a physical change to a pre-existing curb stop/exterior shut-off valve arose.

Omni believes that it has demonstrated reasonable grounds for its complaint consistent with RSA 365:4. Accordingly, it asks that the Commission issue an order of notice setting a prehearing conference for purposes of investigating and resolving the issue.

An original and six copies of this response will be hand-delivered to the Commission. Electronic versions have been provided to Abenaki and the Office of Consumer Advocate.

Sincerely,

A handwritten signature in blue ink that reads "Thomas B. Getz". The signature is stylized and cursive, with the first name "Thomas" written in a larger, more prominent script than the last name "Getz".

Thomas B. Getz

TBG:slb

Cc: Service List