

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 19-131

Complaint of Omni Mount Washington, LLC

OBJECTION TO OMNI MOUNT WASHINGTON, LLC'S
REQUEST TO DELAY HEARING AND HOLD A PREHEARING CONFERENCE

NOW COMES, Abenaki Water Company, Inc.'s ("Abenaki") pursuant to Puc 203.07(e), and hereby objects to Omni Mount Washington, LLC's ("Omni") request to delay the hearing on the merits scheduled for August 5, 2020 and request that the Commission instead conduct a prehearing conference on August 5, 2020. In support of this objection, Abenaki states:

1. Pursuant to Puc 203.07(b) and (d), and Puc 203.04(a)(8), requests for relief must be made in writing in the form of a pleading that contains the word "motion" in its title and that the motion shall clearly and concisely state the facts and law which support the motion and the specific relief or ruling requested. Puc 203.13(b) requires the moving party to "make a good faith attempt to seek the concurrence of the other parties." Omni did neither of these. Omni instead made its request in its reply memo: "that the scheduled hearing be conducted as a pre-hearing conference to address how best to hold a hearing on the merits." Reply Memo at 5.

2. Omni's argument is that there are "issues of fact in dispute" which require witnesses and that "a hearing on the merits would be premature under the circumstances." Reply Memo at 5. Omni did not offer any argument as to why postponing the hearing would promote the orderly and efficient conduct of the proceeding.

3. The Commission should deny Omni's request, not only because it failed to follow the Commission's rules, but because Omni has sat on its rights until the eve of the hearing before

seeking clarification on how the hearing will be conducted. This is disruptive. The Commission first approved the procedural schedule in this proceeding on January 24, 2020. On May 12, 2020, the Commission approved the schedule proposed by Staff and the parties (including Omni) that included the briefing schedule and filing of contested facts. On June 1, 2020, the Commission amended the deadlines for filing the memoranda of law and stipulation of facts, again with Staff and the parties' support. On June 1, 2020, the Commission issued its remote hearing guidelines which specified when exhibit and witness lists would be due. Most recently, two weeks ago, on July 15, 2020, the Commission approved Omni's July 14, 2020 motion to extend the deadline for filing the stipulation of facts. If Omni indeed needed clarification on "how best to hold a hearing on the merits", it could have sought clarification back in May before it agreed to briefing and stipulations of facts in advance of the hearing. It could have sought clarification on July 14th. Now, parties have already made arrangements to attend and secure witnesses for next weeks' hearing. Extending the hearing to some future date will add to Abenaki's legal costs due to the start and stop nature of hearing preparation (let alone legal expense for responding to a non-compliant motion) and produces no clear benefits or any orderly or efficient conduct in exchange for that delay.

4. Lastly, when the Commission determined that there were reasonable grounds for the complaint, it specifically noticed this proceeding as an adjudicative proceeding pursuant to Puc 204.05 and PART Puc 203. PART Puc 203 governs, among other things, discovery, witnesses, exhibits, evidence, cross examination, and burdens of proof-matters that clarify how best to conduct a hearing. Omni has participated in adjudicative proceedings in the past; it should be aware of how such proceedings are conducted. Omni has already displayed that it

understands Abenaki's burden when Omni cited one of the issues noticed by the Commission (duties under RSA 374:1)¹ and alleged that Abenaki had failed to meet that burden.

5. If Omni still has questions about how this adjudicative hearing should proceed, the Commission should direct Staff to confirm the order of witnesses and exhibits parties intend to use. Staff has been performing this role as part of the remote hearing guidelines. The Commission should not convert next week's hearing into a prehearing conference. Such a move would be disruptive to parties' preparation and calendar schedules during these trying pandemic times and would not result in an orderly and efficient conduct of this proceeding.

WHEREFORE, Abenaki respectfully requests the Commission:

- A. Deny Omni's requests to delay the August 5, 2020 hearing; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

Abenaki Water Company, Inc.

By its Attorney,
NH BROWN LAW, PLLC

Dated: July 30, 2020

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Certificate of Service

I hereby certify that a copy of the foregoing has been emailed this day to the docket-related service list.

Dated: July 30, 2020

Marcia A. Brown
Marcia A. Brown, Esq.

¹ See Omni Reply Memo at page 5.