

DW 19-131
OMNI MOUNT WASHINGTON, LLC. COMPLAINT AGAINST
ABENAKI WATER COMPANY, INC.
STAFF REQUESTS TO OMNI – TECHNICAL SESSION 2

Date Request Received: 4/13/20
Staff Tech 2-1 to OMNI

Date of Response: 4/27/20
Christopher Ellms

REQUEST:

Re: Omni's Response to Staff 2-4: Please verify that Omni does not have any additional information regarding the installation, maintenance, ownership, documentation, etc., regarding the pipe that ruptured, which this complaint is based upon, and has not already been provided.

RESPONSE:

Please see Response to Staff Tech 2-2 for additional information.

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OMNI MOUNT WASHINGTON, LLC. COMPLAINT AGAINST
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Date Request Received: 4/13/20
Staff Tech 2-2 to OMNI:

Date of Response: 4/27/20
Christopher Ellms
Douglas Brogan

REQUEST:

Please summarize Omni's position as to why ownership of the pipe rests with Abenaki, including the evidence to make such determination in light of the Commission's burden and standard of proof (Puc 203.25).

RESPONSE:

As explained in Omni's Complaint filed with the Commission on July 24, 2019, Abenaki owns the 8-inch water main serving the Mount Washington Hotel because it was part of the water system, and among the assets, acquired by Abenaki pursuant to Docket No. DW 16-448. Among other things, the Complaint includes a list of deeds and easements appended to the Asset Purchase Agreement (among Abenaki, Rosebrook Water Company, and REDUS Water Co.) that was the subject of Docket DW 16-448. The list of deeds and easements contained in Section 1.1(b) to Schedule 1.1, Purchased Assets, sets forth the real property rights and interests acquired by Abenaki, which documents show that the ownership of the 8-inch water main rests with Abenaki.

Uncontroverted evidence supporting the determination that ownership of the 8-inch water main rests with Abenaki is found in Abenaki's continuing property records. See Attachment 1-1 provided by Abenaki in response to Staff Data Request 1-1. Furthermore, evidence of Abenaki's ownership responsibility is evidenced by its attempt to shift its responsibility to Omni and other customers by changing its tariff, which would have been unnecessary if it did not own the water main, as well as past practice and course of dealing as referred to in Omni's Complaint.

In addition, Omni notes the following:

Omni's Complaint involves a break on the 8-inch main to the Hotel. However, a water main branching off from that main, and running behind the Hotel to serve various Omni facilities, including the Nordic/Golf Building, is also referenced on page 1 of the Complaint and shown on Complaint Attachment A (labeled "MAIN BEHIND HOTEL"). Ownership of this main has also been in dispute. However, the same listing showing a 1985 accounting entry for "main extension to MW Hotel & Bretton Arms" (third and fourth pages of Staff to Abenaki 1-1 attachment), also includes a 2001 entry for:

8" main extension to Nordic Center.

This is referring to the main behind the Hotel. The length is shown as 1790 LF. No plans or records of this main have been found by Omni. While the Complaint indicates a length of 2,200 feet, the routing of the main (see Attachment 1, Staff to Omni Tech 2-2, described further below), although generally known, is not entirely certain. Given that fact, and the overall level of accuracy of the accounting records in that regard, the 2,200 feet correlates reasonably with the 1,790 feet listed in the entry. Similarly, although the main was initially thought to be a smaller diameter, an 8-inch main makes sense given its length and the number of hydrants it supplies. There is one and only main to the Nordic Center, and it was installed in this time frame. The fact that both this main behind the Hotel, and the main to the Hotel, are listed in the accounting attachment strongly suggests Abenaki ownership of both.

Similarly, a 1989 entry lists:

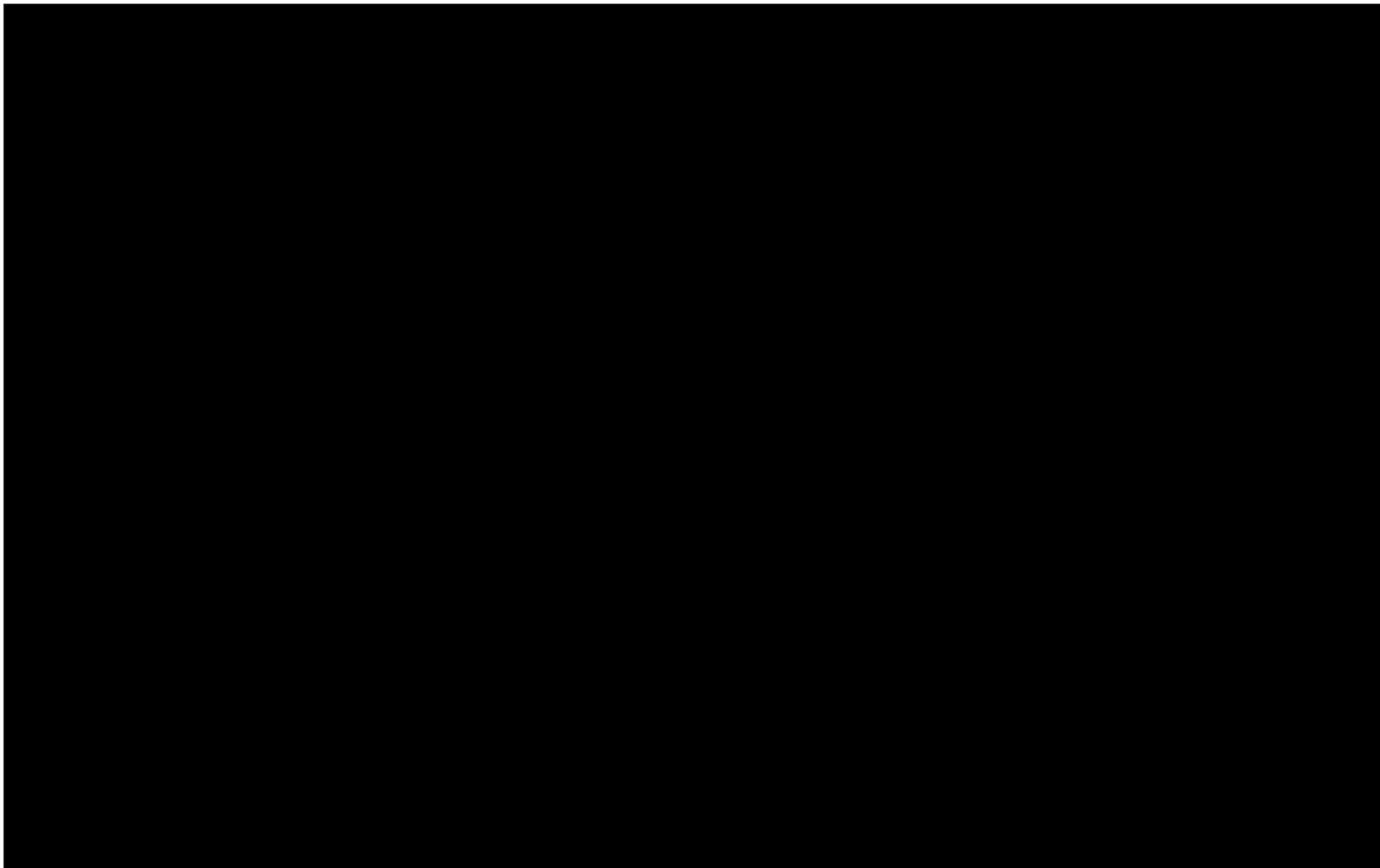
16" main extension to Fairway Village.

A good portion of the latter is visible (although not highlighted) in Attachment A to the Complaint, running along Fairway Drive. The listed lengths of the Fairway Village extension (2880 LF of 16", 890 LF of 8") agree (within less than 10 percent) with the distances shown on the 1995 Provan & Lorber plans, measured as an extension from Mt Washington Place. Abenaki appears to admit ownership of this and similar mains inside the various developments. However, there is no difference between this listing and the two described above as far as implication of ownership by the water company.

The diameter of the Fairway Village main is much larger than needed to serve Fairway Village alone. This suggests that future looping of this main was fully anticipated. Any such looping would clearly benefit more than just the Hotel; it would, at a minimum, turn the Fairway Village dead end main into a looped main. It is noteworthy that, even though the plans show the Fairway Village main ending less than 200 feet from the end of the 6-inch main to the Bretton Arms (the latter having been installed only four years before), no loop was completed with that main. It is also noteworthy that the Fairway Village main was extended some 150 feet past the end of Fairway Village property and onto Omni property. While various options exist for looping, a plausible loop would be to connect Fairway Village to the main behind the Hotel (see Attachment 1, Staff to Omni Tech 2-2).

The unique nature of the Rosebrook system; the way it evolved to serve the overall resort, including the Hotel and surrounding developable land as developments were carved out over time; and the long interplay between Hotel and water system owners, which were often one and the same; does not support the typical property boundary convention for demarcation between water company and customer ownership of mains and services. This is evident in Attachment 2, Staff to Omni Tech 2-2, showing the portion of the Rosebrook system west of Rte 302 (only mains within Omni property are highlighted). Even the central 16-inch backbone of the system, running from the tank in Bethlehem to Base Road, lies within Omni property. It is clear that the entire "service line starts at the property boundary" convention falls apart in this area. For similar, historic reasons in the development of this resort community, the convention falls apart in relation to the infrastructure in the vicinity of the Hotel as well. All of these mains, both east and west of Rte 302, have always belonged to the water company.

REDACTED



REDACTED

