

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-165

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

Petition for Change in Rates

Order on Temporary Rates

ORDER NO. 26,171

August 31, 2018

APPEARANCES: Stephen P. St. Cyr and 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 Alexander F. Speidel, Esq. and F. Anne Ross, Esq., on behalf of Commission Staff.

This order allows Abenaki to implement temporary rates for its Rosebrook Water System on a service-rendered basis effective May 1, 2018. Under the temporary rates, average monthly bills for residential customers will increase by \$2.76. The temporary rates are subject to reconciliation based on the outcome of the permanent rate case.

I. PROCEDURAL HISTORY

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

On December 7, 2017, Abenaki petitioned for a permanent rate increase that would result in additional revenues of \$102,232, or a 37.85 percent increase. Abenaki also requested a step adjustment that would result in a further increase in revenues of \$22,645, or 6.08 percent. The Office of the Consumer Advocate (OCA) filed a letter of participation on December 19, 2017. The Commission suspended Abenaki's proposed tariff and scheduled a prehearing conference

and technical session for January 25, 2018. *See Abenaki Water Company, Inc., Order No. 26,097* (January 5, 2018). On January 18, 2018, Abenaki petitioned for temporary rates, seeking an increase in revenues by \$65,452, or 24.23 percent. Abenaki sought an effective date of January 1, 2018, for the pendency of the permanent rate case proceeding.

Four parties filed for intervention: Bretton Woods Property Owners Association (Bretton Woods POA) on January 19, 2018; the Rosebrook Association on January 26, 2018; Omni Mount Washington, LLC (Omni) on January 31, 2018; and Forest Cottages Association (Forest Cottages) on August 16, 2018.

At a technical session held on January 25, 2018, the participants were unable to reach agreement on a procedural schedule, citing concerns over a yet to be submitted return on equity (ROE) filing. That same day, the OCA filed a recommendation that the rate case be placed on hold pending submission of the ROE filing. Abenaki filed a request to put the rate case on hold the following day. Abenaki requested a resumption of the rate proceeding on February 26, 2018.

In a separate docket, by letter dated February 23, 2018, and received by the Commission on February 27, 2018, Abenaki, Hampstead Area Water Company, Inc., and Lakes Region Water Company, Inc., jointly filed an ROE petition. The petitioners filed additional testimony and schedules, including that of Pauline M. Ahearn, (Ahearn's testimony), the petitioners' cost of equity consultant. *See Docket No. DW 18-026.*

By letter dated March 30, 2018, Commission Staff (Staff) requested approval of a proposed procedural schedule and recommended granting intervenor status to Omni, Bretton Woods POA, and the Rosebrook Association. The Commission approved Staff's recommendation by Secretarial Letter dated April 11, 2018.

Staff filed a Settlement Agreement on Temporary Rates (Settlement Agreement) between itself and Abenaki on May 30, 2018. On June 1, 2018, Abenaki filed Ahearn's testimony in this

docket. The OCA, along with Omni and the Bretton Woods POA (collectively the Objecting Parties), filed a letter on June 8, 2018, opposing the Settlement Agreement. The Objecting Parties argued that Abenaki had not provided effective notice of the temporary rate increase to customers. They also argued that, if the Commission were to set temporary rates, then it should do so at current rates. The Rosebrook Association did not support or object to the Settlement Agreement. On June 11, 2018, the Commission held a hearing on temporary rates.

On June 18, 2018, Omni filed a motion to deem Abenaki's rate filing deficient or reject Ahearn's testimony. The Commission denied Omni's motion in Order No. 26,157 (July 13, 2018). Omni filed a timely motion for rehearing, which was joined by the OCA and the Bretton Woods POA. On August 16, 2018, Abenaki filed an objection to Omni's motion for rehearing.

On July 24, 2018, the Commission issued a Supplemental Order of Notice scheduling an additional hearing on temporary rates for August 23, 2018. In an August 16, 2018, Secretarial Letter, the Commission scheduled oral arguments on Omni's motion for rehearing concurrent with the August 23 temporary rate hearing.

At the August 23 hearing, the parties informed the Commission that Abenaki, Omni, the OCA, and Staff agreed to amend the Settlement Agreement. The amendment set the effective date for temporary rates for May 1, 2018, rather than February 1, 2018, as originally presented. The Bretton Woods POA and Forest Cottages did not oppose that modification. In exchange for moving the effective date for temporary rates, Omni agreed to withdraw its pending motion for rehearing. Omni memorialized its withdrawal in a letter dated August 24, 2018.

Abenaki's petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-165.html>.

II. SUMMARY OF THE SETTLEMENT AGREEMENT

Abenaki originally requested temporary rates that would result in a \$65,452, or 24.23 percent, increase in revenues. Stephen P. St. Cyr testified that Abenaki had been losing money since it acquired Rosebrook in 2016. Further, during the Company's test year ended September 30, 2017, it recognized a net loss of \$27,247. Abenaki Water Company, Inc., Direct Testimony of Stephen St. Cyr, January 18, 2018, at 2. The requested temporary rate was established using a 6.74 percent rate of return based, in part, on a 9.6 percent return on equity. *Id.* The temporary rates would allow Abenaki to "eliminate Rosebrook's net loss, recover its investments, earn the PUC approved rate of return on its investment, and continue to provide service to its customers at fair and reasonable rates." *Id.*

The Settlement Agreement, as originally presented, contained the following five terms for the calculation and implementation of temporary rates: (1) the Company would charge rates sufficient to yield a temporary increase in annual revenues of \$41,145, or 14.89 percent; (2) the temporary rate increase would be implemented uniformly across all customer classes and rates; (3) the temporary rate increase would be computed using a 9.6 percent cost of equity; (4) the temporary rates would be effective on a service-rendered basis as of February 1, 2018; and (5) any difference between the approved temporary rates and the approved permanent rates would be subject to reconciliation from the recommended effective date of February 1, 2018, to the date of the Commission's order establishing permanent rates in this docket, pursuant to RSA 378:29. Schedules attached to the Settlement Agreement contained the calculations supporting the revenue increase.

At the June 11, 2018, hearing on temporary rates, Staff and Abenaki testified in support of the Settlement Agreement, noting that the agreed-upon temporary rates were lower than those

originally proposed. Staff and Abenaki testified that the terms of the Settlement Agreement were reasonable.

At the August 23, 2018, hearing, the Settlement Agreement effective date of temporary rates was modified to May 1, 2018, by agreement of Abenaki, the OCA, Omni, and Staff. Bretton Woods POA and Forest Cottages did not object to this modification. The Rosebrook Association remained silent on the issues presented. All other terms of the Settlement Agreement remained unmodified.

III. COMMISSION ANALYSIS

Unless precluded by law, informal disposition by stipulation may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to N.H. Code Admin. Rules Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation if it determines that the result is just and reasonable and serves the public interest. The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *See Pennichuck Water Works, Inc.*, Order No. 26,070 at 14-15 (November 7, 2017). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.* at 14.

Under RSA 378:27, the Commission may fix temporary rates, after conducting a hearing, provided that the rate is sufficient to yield a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the Commission, unless there appears to be reasonable ground for questioning the figures in such reports. “This is ‘less stringent’ than the standard for permanent

rates, in that temporary rates shall be determined expeditiously, without such investigation as might be deemed necessary to a determination of permanent rates.” *Unitil Energy Systems, Inc.*, Order No. 25,124 at 6 (June 29, 2010) (quoting *Appeal of the Office of Consumer Advocate*, 134 N.H. 651, 660 (1991)). The effective date of temporary rates “fixes and determines the period during which the rates allowed in the underlying permanent rate proceeding may apply.” *Id.* (quoting *Appeal of Pennichuck Water Works*, 120 N.H. at 564).

Abenaki argues that it has been losing money ever since it purchased Rosebrook in 2016. Furthermore, according to its books and records, Abenaki suffered a net loss of \$27,247 by the end of its test year on September 30, 2017. Abenaki proposed a temporary increase of \$65,452, representing a 24.23 percent increase for customers. After Staff’s discussions with Abenaki, the Company and Staff stipulated to a smaller increase of \$41,145, or 14.89 percent. The resulting rate increase would raise the average residential customer’s bill by \$2.76 per month. The increase in average residential customer bills, while not insignificant, is reasonable under the circumstances. Accordingly, we approve the temporary rate increase and find the Settlement Agreement just and reasonable and in the public interest.

We next consider the proposed effective date. As stated above, RSA 378:27 allows the Commission to authorize effective dates as early as the filing date of the petition for permanent rate change. *See Appeal of Pennichuck Water Works*, 120 N.H. at 567. The Settlement Agreement, as modified by the parties at the hearing on August 23, 2018, proposes temporary rates effective May 1, 2018, on a service-rendered basis. The underlying permanent rate filing occurred on December 7, 2018. We have reviewed the Settlement Agreement and find it to be consistent with RSA 378:27. Accordingly, we approve the effective date of May 1, 2018, on a service-rendered basis.

As for the objections submitted by the Objecting Parties in their June 8, 2018, letter, we deem the objections effectively withdrawn. The OCA and Omni both agreed to the terms of the Settlement Agreement on the record at the August 23, 2018, hearing. The Bretton Woods POA, furthermore, chose not to further pursue the objections at the hearing.

Based upon the foregoing, it is hereby

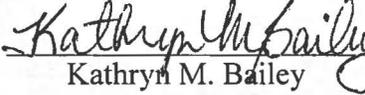
ORDERED, that the Settlement Agreement on Temporary Rates is APPROVED, with Temporary Rates effective May 1, 2018, and Abenaki shall commence collection of the Temporary Rates contained therein; and it is

FURTHER ORDERED, that Abenaki shall submit properly annotated tariff pages, pursuant to the Settlement Agreement, with the Commission within 15 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 2018.



Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Lori A. Davis
Assistant Secretary