

BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

*Abenaki Water Company*

Docket No. DW 15 – 199

*RESPONSE TO OBJECTIONS TO CONFIDENTIAL TREATMENT*

NOW COMES Abenaki Water Co., Inc. (Abenaki), by and through Upton & Hatfield, LLP and responds briefly to the Office of Consumer Advocate (OCA) and Staff objections to Abenaki's *Motion for Confidential Treatment*:

1. Abenaki respectfully responds to the Staff objection filed July 11, 2016 and the OCA's objection of July 5, 2016 for two reasons:
2. First, it appears that Staff and OCA misunderstand Abenaki's motion to be based solely or primarily on the argument that Upton & Hatfield, LLP's invoices contain information is privileged. This view is understandable, but mistaken.
3. Abenaki cited to the law of privilege in order to: (a) support the extremely limited redactions from its confidential filing;<sup>1</sup> and (b) illustrate the highly confidential nature of the description of legal services. While the legal descriptions likely lose their status as privileged by submission for review as a rate case expense, they remain highly confidential and have not been disclosed to the public. Public disclosure is not required for Staff and the OCA to review the legal expenses as legitimate or not. The interest an individual customer has in a line by line review is not significant enough to justify disclosure.

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<sup>1</sup> The redactions from the confidential filing concern areas of cross examination of the OCA's expert who could testify in a future Abenaki proceeding. This information is privileged and highly confidential.

4. Second, both Staff and OCA's objections omit a critical portion of the holding in *Hampton Police Assn. v. Town of Hampton*, 162 N.H. 7, 15 (2011). Both Staff and OCA quote the first portion which states that descriptions of "the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law" is privileged and therefore confidential.

5. However, the Court's holding further states that: "billing statements that provided "an hour-by-hour rendition of the work performed for a client," *including identifying, by name, the people with whom the attorney talked, the topics they discussed, the subjects the attorney researched and the papers he reviewed* "necessarily reveal[ed] strategies, confidential communications, and the thought processes behind the representation" and were privileged from disclosure." *Hampton Police Assoc*, 162 N.H. at 16 *quoting Hewes v. Langston*, 853 So. 2d 1237, 1248-49 (Miss. 2003).

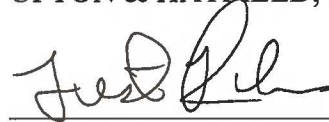
6. Abenaki understands Staff's and OCA's desire to make all information public. However, the description of legal services are highly confidential and identify "by name, the people with whom the attorney talked, the topics they discussed, the subjects the attorney researched and the papers he reviewed". *Id.* This information does not need to be publicly disclosed in order for Staff and the OCA to review it and make appropriate recommendations to the Commission.

Respectfully submitted,

ABENAKI WATER COMPANY

By its Counsel,

UPTON & HATEFIELD, LLP



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Dated: July 15, 2016

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service list for this proceeding.



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Justin C. Richardson