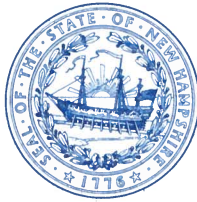


STATE OF NEW HAMPSHIRE

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NHPUC 3 JAN 20 PM 4:07

January 3, 2020

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

Re: Docket No. DW 19-131
Omni Mount Washington Hotel LLC
Complaint Against Abenaki Water Company

Dear Ms. Howland:

As you know, the Commission has scheduled a prehearing conference in the above-referenced docket on the afternoon of January 6, 2020. The Office of the Consumer Advocate (OCA) has previously entered an appearance in this proceeding. Unfortunately, however, both of the OCA's attorneys will be participating in an important meeting of the Energy Efficiency Resource Standard (EERS) Committee of the Energy Efficiency and Sustainable Energy (EESSE) Board on Monday afternoon and thus the OCA will be unable to participate in the prehearing conference in DW 19-131.

We apologize for being unable to resolve this scheduling conflict, assuring the Commission of the OCA's ongoing interest in the proceeding and, generally, in addressing the long-festering issues involving the Rosebrook division of the Abenaki Water Company (Abenaki) and its largest customer, Omni Mount Washington Hotel LLC. To the extent it is appropriate and practicable, we request that the Commission take the comments below into account as it determines the procedural course of DW 19-131.

Our review of the pleadings on file leads the OCA to conclude that this dispute is properly viewed as a disagreement over the meaning of certain language in the applicable Abenaki tariff. In New Hampshire, disputes over the meaning and effect of language in a utility tariff are subject to the rules governing statutory interpretation. *See In re Verizon New England, Inc.*, 158 N.H. 693, 695 (2009) (noting that such tariffs both "define the terms of the contractual relationship between a utility and its customers" and "have the force and effect of law").

If we appeared at the prehearing conference, the OCA would indicate that it supports the interpretation of the language in the tariff advocated by the complainant, Omni Mount Washington Hotel LLC (Omni). In our judgment, the applicable language is ambiguous on the question of whether Abenaki or its customers are responsible for maintaining the service lines that run between the customers' property lines to their premises -- to the extent that such service lines antedate the most recently approved version of the tariff.

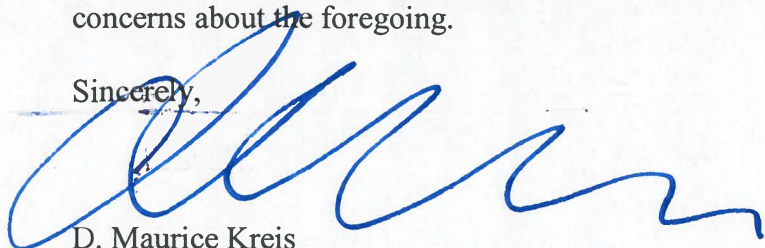
If the tariff were a statute, a court would look to legislative history for insight into how to resolve the ambiguity. *New England Backflow, Inc. v. Gagne*, 2019 WL 5959573 (N.H.) at *3. In the present context, the relevant history is the Commission proceeding that led to the adoption of the tariff language in question. The key insight is recounted at page 3, note 4 of the Omni complaint – particularly the explanation of Abenaki's witness at hearing that the utility sought the tariff change because "when we have the opportunity, we want to move . . . curb stops to the property line." In these circumstances, interpreting the tariff language so as to transfer ownership and responsibility for pre-existing lines buried beneath customer premises retrospectively would be absurd and unfair – not just to Omni but to all of the utility's customers.

The Commission can and should order Abenaki to resolve the tariff ambiguity. In the meantime, the Commission should either resolve the complaint in favor of Omni based on the pleadings already on file or the Commission should offer the parties the opportunity to submit additional briefing.

As you know, the incident giving rise to the Omni complaint was a water-related fiasco that occurred at the Mount Washington Hotel on Easter Sunday of 2019. Omni and Abenaki have offered conflicting accounts of who said what and who did what during the incident and its aftermath. In the view of the OCA, resolving those conflicts would make for a hearing that would be interesting but unnecessary. Should the Commission decide that a hearing is necessary, the OCA would of course participate on behalf of residential utility customers. Under that scenario we request, if possible, that Staff consult with the OCA to assure that no scheduling conflicts would preclude our participation.

I reiterate our apology for being unable to participate in the prehearing conference and thank the Commission for its indulgence. Please feel free to contact me if there are any questions or concerns about the foregoing.

Sincerely,



D. Maurice Kreis
Consumer Advocate

Cc: Service List (via e-mail)