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DEPARTMENT OF ENERGY

21 S. Fruit St., Suite 10
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December 3, 2021

Daniel Goldner
Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301-2429

Re: Department of Energy Complaint regarding Abenaki Water Company
Non-Compliance with DigSafe Requirements under RSA 374:48-56 and Puc 605.07

Dear Chairman Goldner:

On September 27, 2021, the Department of Energy's Enforcement Division Safety Bureau submitted to my attention a complaint pursuant to RSA 365:1 regarding the failure of Abenaki Water Company (Abenaki, or the Company) to comply with RSA 374:48-56 and Puc 605.07 concerning New Hampshire's underground utility damage prevention program (DigSafe) requirements. On October 18, 2021, the Department forwarded the Safety Bureau complaint by electronic mail to Abenaki for a response, pursuant to RSA 365:2. Abenaki filed a response on November 1, 2021.

In its November 1 response, Abenaki contested certain findings of the Safety Bureau and requested that the Department consider mitigating the proposed fine, but agreed to credit any fines to customer bills and to discuss the complaint in an informal conference pursuant to Puc 807.03(a)(2). On November 22, 2021, the Safety Bureau met with representatives of Abenaki and Aquarion Company¹ in an informal conference to discuss the complaint. In that discussion, both companies agreed to accept the Safety Bureau's findings and the civil penalty proposed in the complaint, to be determined by the Public Utilities Commission pursuant to RSA 365:41. All participants agreed to the Safety Bureau's recommendation that this matter be resolved through a formal submission before the Commission pursuant to RSA 365:4.

In accordance with Puc 204.01 *Submission of Formal Complaints*, the Department of Energy hereby submits the attached complaint regarding the failure of Abenaki Water Company to comply with Puc 605.07, which requires that "[a]ll utilities shall comply with Puc 800, the underground utility damage prevention program rules." Abenaki failed to comply with Puc 605.07 because it has not operated as an active member of and in accordance with the One Call System of New Hampshire Underground Damage Prevention system with respect to each of its water distribution systems in New Hampshire.

¹ On November 12, 2021, the NH Public Utilities Commission issued Order No. 26,549 in Docket 21-090, approving Aquarion Company's acquisition of Abenaki Water Company.

Based on the Division's review of filings and information provided by the Company, the period of non-compliance that is the subject of the attached complaint extended from May 2016 through May 2021.

Pursuant to RSA 365:4, the Department may, after investigation, bring proceedings on its own motion before the Commission with respect to any complaint or violation of any provision of law [or] rule" by a public utility. Based on the Safety Bureau's attached report of investigation of Abenaki's violation of Puc 605.07, the Department submits that Abenaki has not complied with NH Underground Utility Damage Prevention System (DigSafe) requirements, including operator response mandates set forth in RSA 374:53. Abenaki Water Company is a public utility as defined in RSA 362:4 with no noted exemptions for compliance with the applicable statutes.

Accordingly, the Department files this complaint and recommends that the Commission impose on Abenaki a civil penalty pursuant to RSA 365:41 for the reasons outlined above and discussed in further detail in the attached Safety Bureau report. The Safety Bureau chose to recommend a civil penalty under RSA 365:41 for the following reasons:

- 1) RSA 365:41 allows for efficiency in evaluating 179 probable violations of the Underground Damage Prevention System;
- 2) The complaint process under RSA 365:41 takes into account the size of the public water utility;
- 3) RSA 365:41 permits a lower civil penalty to be imposed on Abenaki Water Company than would result if each violation were administered and fined separately by the Division of Enforcement pursuant to RSA 374:55; and
- 4) RSA 365:41 permits the Commission to apply a penalty to the benefit of the utility's ratepayers through a credit to bills on a per customer basis, which would be in the public interest and which is not available as a remedy to the Department's Division of Enforcement.

Attached in support of this request is a Department of Energy communication dated September 27, 2021 that outlines the basis of the complaint with relevant details regarding Abenaki's performance under New Hampshire's DigSafe statutes and rules.

Please let me know if we can provide any further information on this matter.



Jared Chicoine
Interim Commissioner

cc: Abenaki Water Company
Aquarion Company
Paul Kasper, Department of Energy, Division of Enforcement Safety Bureau
Lynn Fabrizio, Department of Energy, Division of Enforcement