

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DOCKET NO. DW 19-131

**OMNI MOUNT WASHINGTON, LLC
COMPLAINT AGAINST ABENAKI WATER COMPANY, INC.**

**MOTION TO CONDUCT HEARING AS
PREHEARING CONFERENCE**

Omni Mount Washington, LLC (“Omni”) by and through its attorneys, McLane Middleton, Professional Association, respectfully submits this motion to conduct the hearing scheduled for August 5, 2020, as a prehearing conference under RSA 541-A:31, V (b) to determine the appropriate process for reaching a decision on the merits (“Motion”). The Motion is consistent with the procedure Omni proposed in its Reply Memorandum of Law (“Reply”) filed July 28, 2020. The Consumer Advocate and Bretton Woods Property Owners Association support Omni’s proposal, while Abenaki Water Company, Inc. (“Abenaki”) opposes it. Public Utilities Commission Staff (“Staff”) takes no position.

The Commission has not addressed the mechanics for the August 5, 2020 hearing, other than to require a stipulation of contested facts and circulate a copy of its Remote Hearing Guidelines. While Omni can surmise that a stipulation of contested facts may have had some value earlier in this proceeding as a way to appreciate the scope of the issues, such a device does not appear to add value at this juncture.

On July 14, 2020, Omni asked the Commission to extend the deadline for filing the stipulation of contested facts until July 31, 2020, pointing out that waiting until after the filing of Reply Briefs could better inform the effort to arrive at a stipulation. Omni and Abenaki discussed a stipulation of contested facts and Abenaki also proposed a stipulation of material

facts but the parties were unable to reach agreement. Omni therefore reiterates the request from its Reply that the stipulation of contested facts be set aside as an issue to be considered at the prehearing conference.

The Commission has broad discretion over how it may conduct an investigation under RSA 365:4 and in its Order of Notice it indicated that it was opening an adjudicative proceeding. As would befit a Commission investigation, Staff propounded several rounds of data requests to Abenaki and Omni but Staff has not taken a position by filing a memorandum of law nor has it made a recommendation to the Commission. At the same time, however, Abenaki and Omni have not had the opportunity to pursue discovery of one another, as would normally be the case in an adjudication.

As noted in Omni's Reply, it appears that originally the Commission may have conceived of the hearing as oral argument. It would appear that any such conception was overtaken by events inasmuch as there are material questions of fact in dispute, which do not comport with oral argument. Accordingly, there is a need for the parties to present evidence in the form of documents and testimony, which would be done more efficiently and effectively in the form of written pre-filed testimony.

On July 30, 2020, Abenaki filed an objection to Omni's proposal in its Reply to conduct the hearing as a prehearing conference. Among other things, Abenaki contends that Omni's proposal was inconsistent with the Commission's rules, that Omni should have made its proposal sooner, and that putting off the hearing on the merits will add to Abenaki's legal costs. Abenaki also appears to agree that it has the burden of proof as Omni described it in its July 14, 2020 Memorandum of Law.

Abenaki further says that Omni should be aware of how adjudicative proceedings are conducted, which is a fair point, but this case has not proceeded as a typical adjudication but as an amalgam of an investigation and an appellate proceeding; neither fish nor fowl. Omni does not suggest that the schedule for reaching a decision on the merits needs to mimic other adjudicative proceedings in terms of multiple rounds of testimony and discovery. It does believe, however, that the Commission's investigation, and Omni's and other parties' ability to effectively make their direct case and cross-examine witnesses as part of an adjudication, would benefit from pre-filed written testimony. Limited discovery by means of a technical session could also prove beneficial.

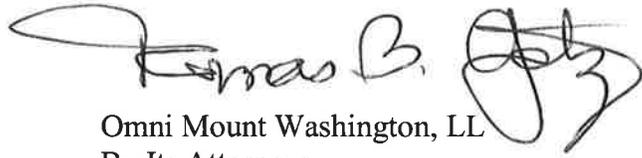
While Omni believes that its proposal as part of its Reply was procedurally sufficient and does not constitute a postponement, it nonetheless files this Motion and asks that, to the extent necessary, the Commission waive, pursuant to Puc 201.05, the seven-day filing requirement in Puc 203.13. Omni believes that granting the waiver is in the public interest inasmuch as the parties to the proceeding had actual notice of Omni's request in a timeframe consistent with the rule and that the rule was thus satisfied by an alternative method.

In conclusion, Omni believes that conducting the August 5, 2020 hearing as a prehearing conference will promote rather than disrupt the orderly conduct of the proceeding and lead to a better-informed decision and a more just result.

WHEREFORE, Omni respectfully requests that the Commission:

- A. Conduct the August 5, 2020 hearing as a prehearing conference; and
- B. Grant such other and further relief as it deems appropriate.

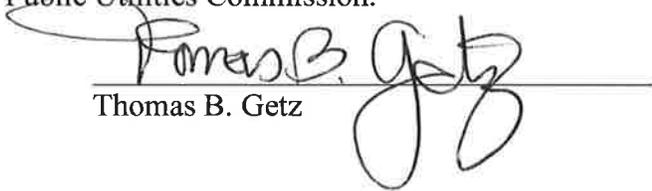
Respectfully submitted,



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Certificate of Service

I hereby certify that on the 31st of July, 2020, an electronic copy of the foregoing Motion was delivered to the New Hampshire Public Utilities Commission.



Thomas B. Getz