

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 21-140

ABENAKI WATER COMPANY, INC.

**Complaint by New Hampshire Department of Energy against
Abenaki Water Company, Inc.**

**Order *Nisi* Assessing Assented-To Monetary Penalty Pursuant to
RSA Chapter 365**

O R D E R N O. 26,595

March 25, 2022

This order approves an assented-to monetary penalty assessed pursuant to the Commission's authority under RSA Chapter 365 for alleged violations of the DigSafe requirements of RSA 374:48-56 and N.H. Code Admin. Rules Puc 605.07 by Abenaki Water Company, Inc.

I. PROCEDURAL HISTORY

On December 3, 2021, Interim Commissioner Jared Chicoine of the NH Department of Energy (Energy) filed a complaint, made pursuant to RSA Chapter 365, with the Commission regarding alleged failures by Abenaki Water Company, Inc. (Abenaki, or the Company) to comply with RSA 374:48-56 and Puc 605.07, which delineate New Hampshire's underground utility damage prevention program (DigSafe) requirements.

This complaint referenced earlier procedural history involving this matter, specifically: (1) an Energy Enforcement Division Safety Bureau (Safety Bureau) complaint submitted to Commissioner Chicoine's attention on September 27, 2021; (2) Energy's forwarding the Safety Bureau complaint to Abenaki for a response on October 18, 2021; (3) Abenaki filing a response with Energy on November 1, 2021; and (4) an informal conference between Safety Bureau and Company personnel on November 22,

2021. Energy's complaint provided copies of the referenced documents which contained factual details concerning the allegations made against Abenaki, with the exception of Abenaki's November 1, 2021 response to Energy. Subsequently, on December 10, 2021, Abenaki filed a letter with the Commission stating that it would accept a certain financial penalty pursuant to RSA Chapter 365, as recommended by Energy, to resolve this matter. The complaint and associated docket filings are posted on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-140.html>

II. POSITIONS OF THE PARTIES

A. Department of Energy

In its complaint made before the Commission pursuant to RSA 365:4, Energy stated that Abenaki has not complied with the DigSafe requirements in place in New Hampshire, including the operator response mandates set forth in RSA 374:53. See Letter of Commissioner Jared Chicoine, 12/3/2021, p. 2. Energy also noted that Abenaki is a public utility as defined in RSA 362:4 with no noted exemptions from compliance with the applicable DigSafe statutes. *Id.*

Safety Bureau personnel, in their September 27, 2021 complaint referral and underlying September 9, 2021 internal memorandum attached to the complaint referral, outlined the existence of 179 probable violations of DigSafe requirements by Abenaki in its operations during the 2016-2021 time frame. This information was developed by Safety Bureau personnel through an investigation, triggered by physical evidence of operational failures to meet DigSafe requirements by the Company that came to light in April 2021 at a Safety Bureau field inspection. The Safety Bureau examined the records of Abenaki, the DigSafe central clearinghouse, and its own internal records to inform its conclusion that violations had taken place.

The Safety Bureau initially proposed, and Energy adopted, the approach that Abenaki should pay a penalty under RSA Chapter 365, a statutory framework that generically provides for penalties against utilities found, after investigation by the Commission, to be in violation of rules or requirements of Energy or the Commission. Specifically, Energy recommended that Abenaki be assessed the maximum penalty under RSA 365:41, namely, the lesser of \$250,000 or 2.5 percent of the annual gross revenue of the Company, which was calculated by Energy to total \$15,283. Energy further proposed that the penalty would be applied for the benefit of Abenaki's ratepayers as a uniform one-time credit to bill on a per customer basis, as allowed for by RSA 365:41.

B. Abenaki

Company representatives participated in an informal conference with Safety Bureau personnel regarding the alleged violations of DigSafe requirements by Abenaki on November 22, 2021. In its filing with the Commission made on December 10, 2021, styled as a "Response of Abenaki Water Company to Complaint," the Company related that at the November 22 discussion, Abenaki, and its new parent company, Aquarion Water Company (Aquarion), agreed to accept the Safety Bureau's findings and proposed monetary penalty of \$15,283, to be refunded to customers as a per-customer, one-time credit of approximately \$17 per customer. Abenaki further related that Energy and the Company "agree on the relevant facts and the proposed resolution surrounding the complaint."

III. COMMISSION ANALYSIS

Pursuant to RSA 365:41, after a complaint being made to the Commission pursuant to the provisions of RSA Chapter 365 and N.H. Code Admin. Rules Part Puc 204, and a finding that a public utility has failed, omitted, or neglected to obey,

observe, or comply with any order, direction, or requirement of the Commission or the Department of Energy, the Commission can determine to assess a civil penalty against the utility. RSA 365:41. This penalty is not to exceed \$250,000 or 2.5 percent of the annual gross revenue that the utility received from sales in New Hampshire, whichever is lower, and shall be applied to the benefit of the utility's ratepayers through a credit to bills. *Id.*

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order by stipulation, agreed settlement, consent order or default. N.H. Code Admin. Rules Puc 203.20(b) requires that any such disposition produces a result that is just, reasonable, and in the public interest.

In this matter, a formal settlement agreement by Energy and the Company was not prepared. However, we view this disposition to be a species of stipulation and consent order, insofar as Energy and Abenaki have indicated, by written filings, their agreement regarding the underlying facts surrounding the instances of violation of the DigSafe requirements, and Abenaki has agreed to accept a penalty assessed pursuant to RSA Chapter 365, as proposed by Energy.

We further find that this disposition produces a result that is just, reasonable, and in the public interest, as it adequately takes into consideration the need to encourage compliance with the DigSafe requirements by Abenaki going forward and customer interests. We note that since the time frame of the violations, the Company is under a new parent company and new management. We further note that our order in this case does not limit our disposition of similar matters in the future.

Based upon the foregoing, it is hereby

ORDERED NISI, that pursuant to RSA 365:41, a penalty of \$15,283 be assessed against Abenaki Water Company, Inc., to be credited to customers through a one-time, uniform credit at the next customer billing cycle; and it is

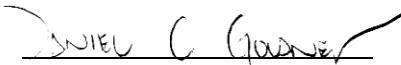
FURTHER ORDERED, that Abenaki Water Company, Inc. shall cause a copy of this order to be published on its website within one business day of this order, and to be documented by affidavit filed with the Commission on or before April 19, 2022; and it is

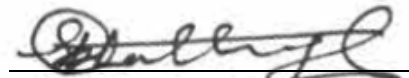
FURTHER ORDERED, that persons interested in responding to this order be notified that they may submit their comments or file a written request for hearing, which states the reason and basis for a hearing, no later than March 31, 2022 for the Commission's consideration; and it is

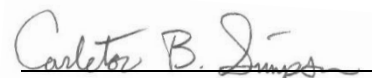
FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than April 7, 2022; and it is

FURTHER ORDERED, that this order shall be effective April 25, 2022, unless Abenaki Water Company, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 2022.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 21-140

Printed: 3/25/2022

Email Addresses

ClerksOffice@puc.nh.gov
Jared.S.Chicoine@energy.nh.gov
Energy-Litigation@energy.nh.gov
ocalitigation@oca.nh.gov
jralston@keeganwerlin.com
dvenora@keeganwerlin.com