

THE STATE OF NEW HAMPSHIRE

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June 23, 2009

Debra A. Howland
Executive Director and Secretary
Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

RE: DW 09-098 Lakes Region Water Company Petition for Authority for ARRA
Financing and Step Increase

Dear Ms. Howland:

On June 1, 2009 Lakes Region Water Company (LRWC) filed a Petition for approval to borrow \$1,500,000¹ from the State Revolving Fund (SRF) including funds provided by the American Recovery and Reinvestment Act (ARRA), and to increase its rates via a step adjustment in order to recover its investment and repay the loan. LRWC requests approval of its petition by Order Nisi in order to obtain the necessary approval in a timely manner.

The Office of Consumer Advocate provides this letter to convey our comments and concerns regarding the Petition, the accompanying direct testimony of Stephen P. St. Cyr, the Company's responses to Staff Data Requests, and our reservations about granting additional increases in LRWC's rates via step increases. We also provide recommendations should the Commission approve the Petition.

Generally, the OCA is well aware of the benefits that accrue to ratepayers when water utilities engage in adequate advance planning of their capital improvements so that the utility can timely apply for, and receive funding from the SRF. Funds received from the SRF are generally at interest rates which are lower than those otherwise available in the market, which translate to lower costs to ratepayers. However, the OCA questions whether this benefit is sufficient to outweigh the concerns that remain about the overall ability of LRWC to continue to provide safe and adequate service to its customers and to function effectively as a regulated utility. We address our specific concerns below.

¹ LRWC's cover letter included with its petition states the Company requests authority to borrow \$750,000 when in fact it seeks to borrow \$1,500,000. See petition at page 2, line 6.



1. LRWC's last full rate case was DW 05-032, which used a 2004 test year. The Company states in its filing in this docket that the projects contemplated will likely be completed in 2010. Therefore, it is likely that the Company will file for the step increase associated with the SRF/ARRA funded projects in late 2010. The OCA is uncertain when the Company would file its next full rate case, but waiting until 2012 is unacceptable to the OCA, especially considering that in September 2007 the Commission opened Docket DW 07-105 to consider whether to place the Company in receivership in light of concerns over whether the Company had the managerial and financial capacity to continue to provide safe and adequate service to its customers. *See DW 07-105 Order of Notice, October 10, 2007.* DW 07-105 remains an open Docket with quarterly meetings held with Company management to review the Company's progress in a number of areas. If LRWC's petition for financing and step increase for related costs is approved, the Company's revenue requirement will increase from \$643,527² to \$840,643,³ or 31% via step increases⁴ not approved within the context of a full rate case since its last rate case.

Similarly, in DW 08-070 the OCA was not a party to the settlement agreement presented at hearing by LRWC and Staff because the OCA opposed the Company's step increase request, in part because we believed that it constituted "single-issue ratemaking." In general, the OCA believes that step increases should be approved in the context of a general rate case which more fully examines a Company's expenses, revenue, and rate base during a test year. We believe, therefore, that the Company should be required to file a rate case and we make a relevant recommendation in our summary paragraph below.

2. In Order No. 24,376 (September 30, 2004) the Commission directed LRWC to install meters in its Lake Ossipee Village (LOV) and Deer Cove systems. In Order No. 24,374 (September 23, 2004) the Commission directed LRWC to install meters in its Indian Mound system. The metering requirements were meant to bring the Company into compliance with PUC 603.03(a). The Commission considered that the Company had faced other more pressing capital improvement needs, and as such had not met the metering directive as of the time of Order 24,692 approving the settlement in DW 05-137 on October 31, 2006. Therefore, the Commission agreed to consider a step increase for costs relating to the metering of these three systems at the time the Company completed the projects. The OCA understands that the Company has never installed meters in these three systems nor filed for a related step increase the Commission agreed to consider. In fact, the current financing request and list of projects to be accomplished does not include metering in any of these three systems. The Company has made statements at quarterly monitoring meetings in DW 07-105 that it feels metering is not appropriate for these systems. While the OCA is willing to consider the basis for these statements, the Company has made no filing or provided any relevant information to support these statements. Meanwhile, as the Commission is aware, customers from these systems participated in DW 08-070 by providing public comments about their dissatisfaction with another increase in rates when they have yet to see meters installed in

² Stipulated revenue requirement of \$643,527 in DW 05-137 approved in Order 24,692, October 31, 2006

³ See SPS 12 with Direct Testimony of St Cyr in this docket.

⁴ Step increases from DW 08-070 and this docket

their systems as directed by the Commission. The OCA is disappointed that LRWC has made no clear plan to deal with this metering issue as they request authorization to spend \$1.5 million on capital improvements to their water systems.

3. The OCA believes it is appropriate for the Commission to review certain information contained in the Company's 2008 Annual Report and to use information in the Report to estimate the Company's current overall Rate of Return, among other things. However, the OCA understands that the Company has not timely filed that report which was due, per PUC 609.04 on March 31, 2009. The OCA understands that the Company has requested and received several extensions to the due date and that the Annual Report is now expected to be filed by June 30, 2009. The Commission should wait to act upon this Petition until the Company has filed its 2008 Annual Report.

4. The OCA is concerned by statements made by Mr. Mason Jr. at the quarterly monitoring meeting in DE 07-105 on 3/31/2009 related to this Petition which suggested that Mr. Mason Jr. intends to have Lakes Region Water Service, the company he owns personally, perform some or all of the work related to these SRF/ARRA funded projects for the regulated utility, Lakes Region Water Company, of which he is the Vice President. The OCA understands from a conversation with Richard Skarinka of the NH Department of Environmental Services (DES) that while such practice may not be strictly forbidden under the SRF and ARRA rules, that such activities, referred to as "forced account work," are subject to additional scrutiny during the contracting and construction phases. The OCA believes that such "extra scrutiny" is appropriate but maintains its heightened concern that such an approach is even being contemplated by this privately held, regulated Company whose management abilities have so recently been called into question. In addition, we are concerned that such an arrangement could jeopardize the "grant" portion of the ARRA funding, which could harm ratepayers.

5. The OCA is concerned that operating expenses for the Company's proposed uranium treatment project at its Tamworth Water System have not been adequately researched and quantified. For example, in response to Staff's discovery, the Company relies on a rough estimate provided by DES for the waste disposal costs of spent filter media which must be performed by a specialty radionuclide contractor. *See* response to Staff 1-4 Attachment D. If the Company has not investigated these operational costs itself in order to understand the processes involved and to estimate the long term costs and rate impacts to customers, we are not confident that this project should be considered "shovel ready." The OCA understands from the Company's filing that it is not including any changes in operating expenses in its step increase request. This does little to reduce our long term concern on behalf of ratepayers.

6. The Company's proposed main replacement project at Gunstock Glen / Brake Hill includes replacement of 8,000 feet of 1 ¼ " pipe with 4" pipe. *See* St Cyr Direct at page 8, lines 13-14. The proposed cost of this project is \$750,000. The OCA has not seen any specific details of the development of the estimated costs for this project, but observes that this estimate appears higher than costs for other main installation/replacement projects recently approved by the Commission. In DW 08-088,

the Commission approved a financing request from Hampstead Area Water Company (HAWC) to finance an interconnection which will consist of installation of 15,000 feet of 10" pipe at an estimated cost of \$1,100,885. Therefore, LRWC's proposed main replacement project indicates a cost of approximately \$93/ft of 4" pipe and the HAWC project indicates an approximate cost of \$74/ft of 10" pipe. The OCA notes that these price estimates seem very different, though we have no specific knowledge of whether either project's costs are higher or lower than industry standards in the local market. It would be prudent for the Commission to seek more information prior to approving the Company's Petition.

7. On Schedule SPS-6 attached to St Cyr Direct Testimony, it appears that in the far right column which shows Accumulated Depreciation, that the Company accounts for ½ year of depreciation for each of the assets in each proposed project. However, in his testimony, Mr. St Cyr indicates that projects will be completed at various times until the final step increase filing is made. On page 8, Mr. St Cyr indicates that the Tamworth projects are planned to be in service in the fall of 2009. On page 11 he indicates that the mains and meters project at 175 Estates is anticipated to be in service in the summer of 2010. The OCA fully expects that if this financing and step increase request receives approval, as filed, from the Commission, the Company will accurately reflect the Accumulated Depreciation and plant in service values from the date that *each* asset is placed in service at the time the Company makes its submission requesting the step increase.

In summary, the numerous issues of concern that are raised by this filing, in combination with our position on step increases outside of a full rate case (*See* Joint Testimony of Traum and Eckberg in DW 08-070), as well as our concern that LRWC should not go too long between rate cases, the OCA recommends that the Company *only* be allowed to collect necessary costs related repayment of principal and interest on the SRF/ARRA funded projects in a step increase. We recommend that the Company *not* be permitted to include costs such as depreciation and taxes. If the Company wishes collection of additional amounts for adding these projects to rate base such as depreciation, taxes, operating costs, working capital, etc., the OCA requests the Commission order the Company to file a full rate case so that these costs can be evaluated in the context of the Company's overall revenues and expenses.

We thank you for your consideration of these comments.

Respectfully,



Meredith A. Hatfield
Consumer Advocate