

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 10-141

LAKES REGION WATER COMPANY, INC.

Permanent and Temporary Rate Proceeding

Order Approving Temporary Rates

ORDER NO. 25,196

February 18, 2011

APPEARANCES: Shaheen & Gordon, P.A., by Donald C. Crandlemire, Esq., on behalf of Lakes Region Water Company, Inc.; Orr & Reno, P.A., by Douglas L. Patch, Esq., on behalf of Property Owners Association of Suissvale; Hidden Valley Property Owners Association by Mr. Paul Dubuc; Office of the Consumer Advocate by Meredith A. Hatfield, Esq., on behalf of residential ratepayers; and Marcia A. B. Thunberg, Esq., for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

Lakes Region Water Company, Inc. (LRWC) serves approximately 1,615 customers in the Towns of Campton, Conway, North Conway, Freedom, Gilford, Moultonborough, Ossipee, Tamworth, Thornton, Tuftonboro, Wolfeboro, and the City of Laconia. On May 19, 2010, LRWC filed a notice of intent to file rate schedules. LRWC also requested waiver of certain filing requirements of N.H. Admin. Rules Puc 1604.01 pertaining to the filing of monthly and quarterly financial statements and data relating to non-utility operations.

On June 1, 2010, the Office of the Consumer Advocate (OCA) filed a notice of participation pursuant to RSA 363:28. The OCA also filed an objection to LRWC's waiver request. On June 10, 2010, LRWC filed a response to OCA's objection. LRWC stated that it

does not produce quarterly financial statements and that it does not have any non-utility operations.

On July 19, 2010, LRWC filed its proposed rate schedules proposing a 40.74% increase in its revenue requirement as well as supporting materials and a request for temporary rates. LRWC stated that during the twelve months ending December 31, 2009, its actual net income was a \$207,674 loss. LRWC also requested a step increase in 2011 to recover approximately \$1,480,000 in capital costs associated with land, wells, pump house, pumping equipment, and mains associated with the development of a well field referred to as the Mount Roberts property. LRWC stated that it had started the lengthy permitting process with the N.H. Department of Environmental Services for a Large Groundwater Withdrawal Permit. LRWC estimated its request for a step increase would increase its revenue requirement by approximately 31.74% over the permanent rates requested based on LRWC's adjusted test year.

On August 17, 2010, the Commission issued Order No. 25,140, suspending the proposed tariff revisions and scheduling a Prehearing Conference and Technical Session for September 24, 2010. On September 17, 2010, the Property Owners Association at Suissevale, Inc. (POASI) filed a petition for intervention. The prehearing conference was held as scheduled and the Commission granted intervention status to POASI and Hidden Valley Property Owners Association (HVPOA), which had made an intervention request at the prehearing conference.

Following the Prehearing Conference and Technical Session, Staff filed a letter proposing an agreed-upon procedural schedule, which was approved by a secretarial letter dated October 4, 2010. On October 15, 2010, Attorney Donald C. Crandlemire from the law firm of Shaheen & Gordon, P.A., filed an appearance on behalf of LRWC.

On November 18, 2010, Staff and LRWC filed a settlement agreement on temporary rates. On November 24, 2010, OCA filed the testimony of Stephen R. Eckberg. On December 10, 2010, LRWC filed a partially assented to motion to file rebuttal testimony as well as rebuttal testimony of Stephen P. St. Cyr. On December 10, 2010, Staff filed a corrected settlement agreement on temporary rates between Staff and LRWC.

On December 13, 2010, the Commission held a hearing on temporary rates at which Staff and LRWC presented the testimony of Messrs. Mark A. Naylor and Jayson Laflamme on behalf of Staff and Stephen P. St. Cyr on behalf of LRWC in support of the settlement agreement. OCA presented the testimony of Stephen R. Eckberg. On December 17, 2010, LRWC filed its response to record requests made at the temporary rate hearing which were reserved as Exhibits 4 and 5.

II. POSITIONS OF THE PARTIES AND STAFF

A. OCA

The OCA requests that the Commission grant temporary rates to LRWC at a rate no higher than the Company's current rates. In support of its position, OCA states that there are many issues that need to be resolved, including LRWC's financial ability to manage a public utility. OCA stated that the following issues need to be resolved before LRWC receives additional revenues: costs related to pensions paid to LRWC's owners; costs related to long term debt and the interest rate on long term debt paid to LRWC's owners; costs related to 'service trades' between LRWC, its affiliate, and third parties; and revenues related to the special contract with POASI and the possible interconnection of a new development at York Village. Exh. 6 at 4. OCA stated that LRWC has not done several things required under the settlement agreement in

Docket No. DW 07-105, an investigation into LRWC's quality of service, and that this calls into question LRWC's managerial and financial capabilities.

With respect to the settlement agreement, OCA supported setting the Federal Income Tax rate at zero on Schedule 4 of the settlement agreement since LRWC did not pay any income taxes in 2008 and 2009. OCA acknowledged that LRWC's books and records demonstrate that it is under-earning, but OCA said it was unclear at what level LRWC was under-earning since it argues that the underlying costs are in part improper. Exh. 6 at 3.

B. Staff and Lakes Region Water Company, Inc.

The positions of Staff and LRWC are embodied in the terms of the settlement agreement described below:

1. Revenue Requirement

LRWC and Staff agree to a temporary increase in LRWC's annual revenues by \$143,964, or 18.51% above current rates, for a total revenue requirement of \$921,829.

2. Rate Design

LRWC and Staff recommend the increase be applied to customers according to the currently approved rate design.

3. Effective Date and Recoupment

LRWC and Staff recommend the temporary increase be effective in customer rates for service rendered on and after September 17, 2010, the date by which all customers were notified of the requested rate increases. The increase would also apply to Gunstock Glen customers who will be moving to LRWC's consolidated tariff.

4. Combine Temporary Rate Increase with DW 08-070 Step Increase

LRWC has sought a step increase to rates for capital improvements related to improvements made at LRWC's Hidden Valley system as well as capital costs associated with interconnecting the Gunstock Glen system to a nearby water system in Docket No. DW 08-070. Staff and LRWC recommend LRWC receive a 1.54% step increase to its present revenue requirement in that docket. To avoid

customer confusion, Staff and LRWC recommend that rate increase occur coincident with the proposed temporary rate and be implemented on a service-rendered basis effective on the date of the Commission's order in this proceeding. Only the temporary rate portion of the increase would be subject to recoupment pursuant to RSA 378:29.

C. Property Owners Association of Suissevale

POASI took no position on the proposed temporary rates.

D. Hidden Valley Property Owners Association

HVPOA did not oppose or concur with the proposed temporary rates.

III. COMMISSION ANALYSIS

Pursuant to RSA 378:27, the Commission may authorize temporary rates for the duration of the proceeding if the public interest so requires; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public services less accrued depreciation, as shown by the reports of the utility filed with the Commission, unless there appears to be reasonable ground for questioning the figures in such reports. The standard for approval of temporary rates, which are fully reconcilable, "is 'less stringent' than the standard for permanent rates, and temporary rates shall be determined expeditiously, 'without such investigation as might be deemed necessary to a determination of permanent rates.'" *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 660 (1991) (citing *New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518 (1949)).

Staff and LRWC recommend the Commission approve a temporary revenue increase of 18.51%. This increase is based on a 2009 test year and uses an 8.23% rate of return, which the Commission approved in LRWC's last rate case, Docket No. DW 05-137. It is based on a proformed test year operating income of \$191,307. The temporary rate increase is based on a rate base of \$2,324,509, which includes Staff adjustments to LRWC's calculations to reflect a 5-

quarter average. LRWC testified that the assets in the recommended rate base were in service and are used and useful, thereby satisfying RSA 378:28. Hearing Transcript of December 13, 2010 (12/13/10 Tr.) at 17 lines 18-21. Staff and LRWC have taken into consideration assets placed in service at LRWC's Hidden Valley, Gunstock Glen, and Brake Hill systems, which were reflected in the proposed rates resulting from LRWC's third step increase, in Docket No. DW 08-070. Staff and LRWC have also agreed to a federal income tax rate of zero.

OCA proposes that temporary rates be set at current rates. OCA's position stems from its questioning of figures appearing in LRWC's filed reports concerning pension costs, long term debt interest, "service trades", and revenues from LRWC's special contract. This Commission has approved current rates as temporary rates in situations when the utility, based upon its books and records, has been earning less than its authorized rate of return.¹ The situation with LRWC, however, differs from these instances in that LRWC's existing revenues are inadequate to cover its expenses and to meet its obligations. 12/13/10 Tr. at 17 lines 17-18. LRWC reported a loss of \$207,674 on its 2009 Annual Report, thus, its appeal for a temporary rate increase is not based on under-earning; rather, it is because it is earning a negative rate of return.

There is nothing in the record to indicate that resolution of the issues OCA has identified would put LRWC in a positive earnings position. OCA testified that "[w]hile the books and records of the Company may demonstrate under-earning and the possible need for a rate increase, the level of that under-earning is unclear." Exh. 6 at 3. Also, Staff and OCA agree that LRWC ought to have a federal tax rate of zero, indicating that it will not earn enough income to incur federal tax liability. We conclude that approving current rates as temporary rates would compound LRWC's under-earning, further strain its finances, and could negatively affect service

¹ *Hampstead Area Water Company, Inc.*, Docket No. DW 02-128, Order No. 24,119, 88 NH PUC 48 (2003) and *Hampstead Area Water Company, Inc.*, Docket No. DW 08-065, Order No. 24,932, (January 16, 2009).

to its customers. The financial integrity of a utility is a legitimate concern and “it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business.” *Federal Power Commission v. Hope Natural Gas, Co.*, 320 U.S. 591, 603 (1944). Furthermore, since LRWC’s current rates are insufficient to allow it to earn a positive return on its investment, if we approve current rates as temporary rates, we would be approving LRWC’s continued losses for the duration of this proceeding.

An additional consideration is that a temporary increase in a utility’s rates reduces potential rate shock at the conclusion of a rate case. LRWC’s approved rate base from its last rate case was \$1,338,047, and Staff and LRWC propose a rate base of \$2,324,509 for temporary rates. Additionally, LRWC seeks to add \$1,436,235 to its rate base for its Mount Roberts land and well field in a step increase, for a total rate base of \$3,760,744. To recover these additions to rate base, LRWC seeks a 40.74% increase in its permanent annual revenue requirement and a 31.74% increase for the step adjustment for a total increase of 72.48%. Without prejudging the issues in the permanent rate phase of this proceeding, this would represent a significant increase. We find that the proposed increase of 18.51% above current rates would allow a more gradual rate increase under these circumstances. Staff’s recommendation is based on a review of LRWC’s filing, annual reports, and discovery which we believe satisfies the “less stringent” standard articulated in *Appeal of Office of Consumer Advocate*. For these reasons, we find the proposed temporary rate increase to be just and reasonable and we will approve it.

OCA also argues that LRWC should not receive a temporary rate increase because Docket No. DW 07-105 is not yet resolved and that LRWC has failed to perform several actions contained in a settlement agreement in that docket. While we remain concerned that Lakes Region can exercise adequate management capability over the long term, and will pursue those

issues outside of this docket, we are also concerned that denying access to a temporary rate increase will exacerbate matters in the short term and undermine the long term goal.

Accordingly, setting temporary rates at current rates could prove to be counter-productive to the interests of customers.

RSA 378:27 authorizes temporary rates sufficient to yield a reasonable return on utility the property that is used and useful in the provision of utility service to the public, “based on reports of the utility filed with the commission” Thus, the temporary rate phase of a rate case is limited, and is not an opportunity to evaluate all expenditures of the utility or address utility operations. These are matters that will be fully scrutinized by the parties and Commission Staff during the permanent rate phase of the proceeding. Further, the reconciliation mechanism found in RSA 378:29 will adequately protect customers. This provision reconciles temporary rates collected from customers during the Commission’s investigation against approved permanent rates such that customers will ultimately pay no more than the approved permanent rates.

With respect to the September 17, 2010 proposed effective date for the temporary rate increase, we note that RSA 378:27 allows the Commission to authorize effective dates as early as the date on which the petition for a permanent rate change is filed. *Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980). LRWC filed a notice of intent to file rate schedules on May 19, 2010. We issued Order No. 25,140 on August 17, 2010, notifying the public of LRWC’s rate case filing, suspending LRWC’s proposed tariffs, and establishing a prehearing conference. LRWC testified that it mailed a display advertisement concerning the rate filing to all customers on September 15, 2010. 12/13/10 Tr. at 21 lines 1-3. LRWC also filed an affidavit of publication indicating the display advertisement was published in the New Hampshire *Union*

Leader on September 17, 2010. Given that Lakes Region issues bills on a quarterly basis and is currently operating at a loss, it is both administratively efficient and consistent with the public interest to make the temporary rates effective September 17, 2010 for LRWC's consolidated rate customers.

With respect to the effective date for customers in LRWC's Gunstock Glen system, we note that, in Docket No. DW 08-070, Staff and LRWC filed a stipulation agreement requesting the Commission approve applying LRWC's consolidated rate to Gunstock Glen's 55 customers, effective on a service-rendered basis as of the date of the Commission's order approving the stipulation. That docket involved a request for financing and step increases to rates to allow LRWC to recover on capital improvements made to address safety, adequacy, and reliability issues that were identified in Docket No. DW 07-105. Staff and LRWC were silent in Docket No. 08-070, and in the instant docket, about whether the temporary rates should apply to Gunstock Glen customers prior to the effective date of the orders in either docket.

Given that consolidated rates for LRWC's remaining customers do not apply to Gunstock Glen customers prior to the orders in either docket, we conclude that Staff and LRWC intended that temporary rates for the consolidated rate customer group not apply retroactively to the Gunstock Glen customers. Accordingly, we will approve an effective date for temporary rates for LRWC's Gunstock Glen customers on the effective date of the order approving LRWC's third step request in Docket No. DW 08-070.

Having reviewed the record in this proceeding, including the settlement agreement and the supporting testimony presented at the December 13, 2010 hearing, we find that LRWC has demonstrated an earnings deficiency and that it is in the public interest to authorize, on a temporary basis, an increase in LRWC's revenue requirement sufficient for it to earn a positive

return during the Commission's investigation of this proceeding. We find the temporary increase in LRWC's revenue requirement and temporary increase in customer rates proposed by Staff and LRWC in the settlement agreement to be just and reasonable and consistent with our statutory authority.

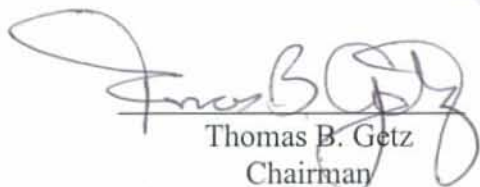
Based upon the foregoing, it is hereby

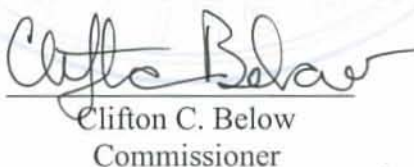
ORDERED, that Staff and Lakes Region Water Company, Inc.'s proposed temporary rate increase is **APPROVED**, on a service-rendered basis, effective for service rendered on or after September 17, 2010 for customers in LRWC's consolidated tariff; and it is

FURTHER ORDERED, that Staff and Lakes Region Water Company, Inc.'s proposed temporary rate increase is **APPROVED**, on a service-rendered basis, effective for service rendered on or after the effective date of the order in Docket No. 08-070 for Gunstock Glen customers, as described above; and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc. shall submit tariff pages in compliance with this order within 15 days of the date of this order.

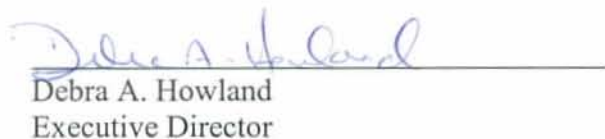
By order of the Public Utilities Commission of New Hampshire this eighteenth day of February, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director