

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 07-105, DW 10-043, DW 10-141, DW 11-021

LAKES REGION WATER COMPANY, INC.

**Investigation into Quality of Service, Affiliate Agreement with LRW Water Services, Inc.,
Permanent Rate Proceeding, and Petition to Approve Long-Term Debt**

**Order Modifying Affiliate Agreement, Closing Dockets, and
Terminating Designations of Commission Staff**

ORDER NO. 25,578

October 1, 2013

I. PROCEDURAL BACKGROUND

A. Affiliate Agreement

In Order No. 25,391 (July 13, 2012), the Commission ordered Lakes Region Water Company, Inc. (Lakes Region), a public utility supplying water to customers in central and northern New Hampshire, to produce certain labor rate schedules pertaining to the Affiliate Agreement between Lakes Region and its affiliated service company, LRW Water Services, Inc. (LRW). This Affiliate Agreement was approved by the Commission in Order No. 25,391, with the condition that Lakes Region was required to submit, by December 1, 2012, a schedule of market rates charged by LRW's competitors for services rendered to Lakes Region on a recurring basis, to be considered in adjustment of the affiliate agreement between LRW and Lakes Region. *See* Order No. 25,391 at 19-20, 28. (Further background regarding the parties' arguments relating to the Affiliate Agreement may be found within Order No. 25,391 *passim*).

On December 4, 2012, Lakes Region late-filed such a schedule of LRW competitors' market rates. On January 28, 2013, the Office of the Consumer Advocate (OCA) filed a letter with the Commission, requesting that the Commission modify the terms of the Affiliate Agreement between Lakes Region and LRW. *See* Letter from Rorie E.B. Hollenberg, Esq., Assistant Consumer Advocate, to Executive Director Debra A. Howland, dated January 28, 2013. On January 29, 2013, Lakes Region filed a letter in opposition to the OCA's Affiliate Agreement proposals. *See* Letter of Justin C. Richardson, Esq., to Executive Director Debra Howland, dated January 28, 2013.

B. Designation of Commission Staff

On November 1, 2011, Lakes Region filed a motion to designate Staff witness Mark Naylor, Director of the Gas and Water Division, and Staff Attorney Marcia Brown as Staff Advocates for the consolidated dockets comprising this proceeding. On November 10, 2011, Staff filed an objection to the motion to designate, and on November 16, 2011, Lakes Region filed a response to Staff's objection. In view of the nature of the disputes described in the above pleadings, the Commission designated, on a discretionary basis pursuant to RSA 363:32, II, Mr. Naylor and Ms. Brown as Staff Advocates by a secretarial letter dated December 9, 2011.

II. POSITIONS OF THE PARTIES (AFFILIATE AGREEMENT)

A. Lakes Region

In its rate schedules submitted, pursuant to Order 25,391, Lakes Region presented evidence indicating that the market rates charged by LRW's competitors for "operators" and "mechanics" generally ranged from \$50-60 per hour, the same general level as that assessed by

LRW to Lakes Region for Lakes Region's use of LRW personnel (\$50 per hour), thereby making LRW's rates charged to Lakes Region competitive. *See* Letter from Justin C. Richardson, Esq. to Executive Director Debra A. Howland, dated December 3, 2012. On this basis, Lakes Region recommended that the rates in the Affiliate Agreement remain in effect. Lakes Region did not directly address the reasonableness of the \$25 per hour rate assessed by Lakes Region to LRW for LRW's use of Lakes Region personnel in this filing. In its response to the OCA's January 28, 2013 filing (discussed below), however, Lakes Region re-asserted its position, elucidated in the general Docket No. DW 10-141 rate case proceeding, that upward adjustment of the labor rate paid to Lakes Region by LRW under the Affiliate Agreement would have a "substantial negative impact on customers," in light of the revenues derived by Lakes Region from the hiring out of its personnel to LRW. *Id.* Lakes Region also asserted that OCA's January 28, 2013 filing was not timely, given the Commission's alleged total approval of the Affiliate Agreement in Order No. 25,391, which, Lakes Region argued, precluded revisiting the Affiliate Agreement issue outside a new general rate case. *Id.*

B. Office of the Consumer Advocate

The Office of the Consumer Advocate, in its January 28, 2013 filing responding to Lakes Region's submission of LRW's competitors' rates, argued that the rates charged by Lakes Region to LRW for use of its personnel should be increased from \$25 per hour, as contemplated by the Affiliate Agreement, to \$50 per hour, approximately the same rate as Lakes Region pays for use of LRW personnel. *See* Letter from Rorie E.B. Hollenberg, Esq., to Executive Director Debra Howland, dated January 28, 2013. The OCA argued that the rate paid by the service-

company affiliate LRW for the services of the utility Lakes Region's employees was too low, and inconsistent with the long-standing public utility ratemaking principle that an affiliate should pay a public utility the actual cost of the service (provided by the public utility to the affiliate) or the market value of the service, whichever is greater. *Id.* at p. 2. In light of Lakes Region's survey of the rates assessed by LRW's competitors for services comparable to those provided by Lakes Region's employees hired out to LRW under the Affiliate Agreement, the OCA argued, the Affiliate Agreement's labor rate for Lakes Region personnel hired out to LRW required upward adjustment to a labor rate of at least \$50 per hour. *Id.*

III. COMMISSION ANALYSIS

A. Affiliate Agreement

The Commission has thus far, on its own discretion, refrained from ruling on the issues raised by Lakes Region's disclosure of rates charged by the competitors of LRW, and the subsequent filings by the OCA and Lakes Region, in view of the various demands on Lakes Region's, and LRW's, managerial resources during 2013. Specifically: Lakes Region's reorganization of its Board of Directors; Lakes Region's hiring of a new Financial Manager; the filing and review of what Lakes Region characterized as a need for emergency rates in Docket No. DW 13-041; Lakes Region's ongoing efforts to stabilize its financial condition; and the demands placed on Lakes Region and LRW during the 2013 spring and summer construction and repair season have led us to delay our final ruling on the Affiliate Agreement between Lakes Region and LRW in order to minimize the potential strain on Lakes Region's limited managerial time and resources during this critical year in its turn-around effort.

Nevertheless, the issues raised by the Affiliate Agreement require our attention. Specifically, we concur with the OCA that, when the “greater-of-cost-or-market-rate” principle for affiliate agreements is applied, the services provided by Lakes Region personnel to LRW should be increased to a level roughly equal to that charged by LRW to Lakes Region for the use of LRW personnel, *i.e.*, \$50 per hour. This price level is supported by the costs cited in Lakes Region’s schedule, which, for the comparable services provided by “operators” and “mechanics,” appear to generally fall in the \$50-\$60 range. We concur with Lakes Region that the rates charged by LRW to Lakes Region for the use of LRW personnel are not problematic. Rather, the gap in labor rates resulting from the lower hourly rate paid by LRW for the use of the utility Lakes Region’s employees is not reasonable in light of the evidence presented, and must be closed.

We are confident that, with an equivalent price structure for LRW personnel providing services to Lakes Region and Lakes Region personnel providing services to LRW, Lakes Region will continue to benefit from the assistance of its affiliate LRW in maintaining and expanding its physical plant, without the potential for underpayment of Lakes Region for its scarce human resources. Moreover, the increase in the labor rate paid to Lakes Region personnel hired out to LRW will enhance the utility’s revenue position, not damage it. Therefore, we order Lakes Region to modify, no later than October 31, 2013, its Affiliate Agreement with LRW to have equivalent \$50 per hour labor rates for personnel exchanged in both directions between LRW and Lakes Region. We also order Lakes Region to file this modified Affiliate Agreement with the Commission, in this consolidated docket, immediately upon its execution.

In doing so, we reject Lakes Region's assertion, posited in its January 29, 2013 letter responding to OCA's January 28, 2013 letter, that "...the OCA uses the filing as an opportunity to repeat arguments that the Commission declined to adopt, and, arguably, rejected, when it issued Order No. 25,391. The OCA's request is therefore untimely under RSA 541:3." *See* Letter from Justin C. Richardson, Esq. to Executive Director Debra A. Howland, dated January 28, 2013, at p. 1. We disagree. In Order No. 25,391, we clearly ordered Lakes Region to provide a schedule of market rates charged by LRW competitors' for services rendered to Lakes Region by LRW on a recurring basis, to be considered in adjustment of the Affiliate Agreement. *See* Order No. 25,391 at 19-20, 28. The OCA properly filed its views regarding the potential implications of the information provided by Lakes Region for our consideration of adjustment of the Affiliate Agreement, within the context of this consolidated proceeding. Our approval of the Affiliate Agreement was conditional, not unconditional. Our adjustment of the Affiliate Agreement is our modification of a conditionally-approved Affiliate Agreement subject to our supervisory responsibilities under RSA Chapter 366.

B. Staff Designations

Nearly two years have passed since the designation of Director Naylor and Attorney Brown as Staff Advocates on December 9, 2011. With the issuance of this order, the issues in dispute in the consolidated dockets comprising this proceeding have been resolved. In order to facilitate the Staff Advocates' ongoing supervisory activities involving Lakes Region, we terminate our discretionary designation of Mr. Naylor and Ms. Brown as staff advocates in this consolidated proceeding as reasonable and in the public interest.

C. Closing of Consolidated Proceeding (December 31, 2013)

We find the continued existence of Docket Nos. DW 07-105, DW 10-043, DW 10-141, and DW 11-021 beyond the close of 2013 to be unnecessary. In particular, the emergency rate case docket in Docket No. DW 13-041 includes the most recent financial status update filed by Lakes Region on August 8, 2013, pursuant to the terms of Order No. 25,557. Therefore, we order that further financial status updates be made in Docket No. DW 13-041, until such time as Lakes Region files a new rate case. Filings regarding the Affiliate Agreement may continue to be made in this consolidated proceeding, until December 31, 2013, at which time this consolidated proceeding shall be closed.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the affiliate agreement between LRW Water Services, Inc. and Lakes Region are modified, and the amended agreement shall be filed by Lakes Region with the Commission, as discussed herein; and it is

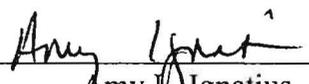
FURTHER ORDERED, that the designation of Mark Naylor and Marcia Brown, Esq., in these consolidated dockets is hereby terminated; and it is

FURTHER ORDERED, that these consolidated Docket Nos. DW 07-105, DW 10-043, DW 10-141, and DW 11-021 are to be closed effective December 31, 2013, with further financial status updates, as most recently ordered by Order No. 25,557 (August 2, 2013), in Docket No. DW 13-041, to be made in Docket No. DW 13-041, until such time as Lakes Region files a new rate case.

DW 07-105
DW 10-043
DW 10-141
DW 11-021

- 8 -

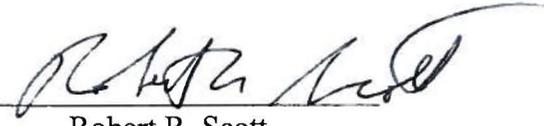
By order of the Public Utilities Commission of New Hampshire this first day of October,
2013.



Amy Ignatius
Chairman

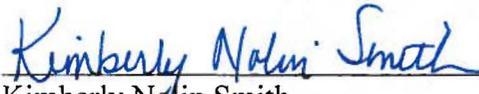


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary