

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 16-834

**COMPLAINT OF ROBERT MYKYTIUK AGAINST
LAKES REGION WATER COMPANY, INC.**

ORDER ON HEARING ON MERITS

ORDER NO. 26,014

May 5, 2017

APPEARANCES: Robert Mykytiuk, *pro se*; Upton & Hatfield, LLP, by Justin C. Richardson, Esq., for Lakes Region Water Company, Inc.; and Staff of the Public Utilities Commission by John S. Clifford, Esq.

The Commission orders Lakes Region Water Company, Inc., to refund certain base charges it has collected from its customer, Robert Mykytiuk, and prohibits the company from imposing such charges unless and until they are included in the company's tariff.

I. PROCEDURAL BACKGROUND AND POSITIONS OF THE PARTIES

On October 4, 2016, Robert Mykytiuk filed a complaint with the Commission against Lakes Region Water Company, Inc. (Lakes Region or the Company), alleging that Lakes Region cannot require him to pay an additional quarterly base charge¹ of \$135.26 under the terms of its tariff. The additional base charge relates to a second structure on Mr. Mykytiuk's property located at 17 Mayflower Lane in the Town of Moultonborough.

In March 2016, the Company learned that Mr. Mykytiuk had completed construction of an additional structure on his property. During construction, Mr. Mykytiuk tapped into the service connection to his primary residence to supply water to the new structure. Shortly

¹ The parties have used the term "base charge" interchangeably with the "Minimum charge per customer per quarter," which is the phrase used in the Company's tariff. *See* NHPUC No. 6 – Water, 7th Rev. Page 10, Nov. 28, 2016.

thereafter, Lakes Region sent a letter to Mr. Mykytiuk requesting an inspection of the water service connection along with an application for service relating to the new structure.

On May 9, 2016, Lakes Region sent a supervisor to the Mykytiuk residence to inspect the new service connection. Lakes Region concluded that the new structure required a separate service connection, but chose not to install a separate connection at that time. Instead, Lakes Region started to bill Mr. Mykytiuk an additional base charge of \$135.26 per quarter. The additional charge first appeared on Mr. Mykytiuk's June 2016 water bill and has continued to appear on subsequent bills to date. Mr. Mykytiuk took exception to Lakes Region's interpretation of the terms of its tariff and, in his complaint, submitted that the new structure is an accessory dwelling unit and that he is not required to have separately metered water service.

By letter dated October 11, 2016, the Commission notified Lakes Region and Mr. Mykytiuk that it would treat the matter as a formal complaint. On November 10, 2016, the Commission issued a letter setting a hearing for December 14 and directing the parties to file witness lists, summaries of testimony, and exhibits by November 30. Both parties made timely filings. On December 5, 2016, Lakes Region filed a Motion to Deny Complaint and Exclude Irrelevant Evidence. As a result of that filing, the Commission canceled the December 14 hearing so it could properly address the issues raised in Lakes Region's motion. Mr. Mykytiuk filed an objection to the motion on December 14. The Commission issued an order on January 31, 2017, limiting certain testimony of both parties. A final hearing on the merits was held before the Commission on March 20, 2017. Mr. Mykytiuk's complaint and all other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at

<http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-834.html>

II. POSITIONS OF THE PARTIES

A. Robert Mykytiuk

Mr. Mykytiuk stated that Lakes Region is prohibited from charging him a separate base charge for his additional structure because such a charge is not included in the tariff on file with the Commission. Tr. at 10. If authority existed in the tariff for a second base charge, Mr. Mykytiuk would pay it. Tr. at 112.

Mr. Mykytiuk offered the testimony of Karel Crawford, a State Representative who represents District 4 which covers the area of Moultonborough where Mr. Mykytiuk lives. Ms. Crawford testified that she searched the tariff to determine if Lakes Region could charge a second base charge for the second building. She could not find where that was permitted under Lakes Region's tariff. Tr. at 19. When she contacted Amanda Noonan, the Director of Consumer Services and External Affairs at the Commission, Ms. Noonan indicated she could not find where a second base charge is permitted in Lakes Region's tariff. Tr. at 19. Ms. Crawford agreed that Mr. Mykytiuk has installed a "tandem" service line on his property to provide water service to the second structure, Tr. at 23, but she thinks that there should be clarification in the rules or in Lakes Region's tariff to be clear when a customer will be charged a second base fee. Tr. at 27.

Mr. Mykytiuk next called Kevin Quinlin to testify. Mr. Quinlin is the president of the Balmoral Improvement Association and a member of the Moultonborough Planning Board. Tr. at 36. Mr. Quinlin stated that he had several conversations with Lakes Region's president, Thomas Mason, concerning the issues Mr. Mykytiuk was having with Lakes Region and the second base charge. Tr. at 37. Mr. Quinlin reviewed the regulations and tariff and could not find any basis for the fee through his own research. *Id.* Mr. Quinlin stated that the Moultonborough

Planning Board was aware of the issue and that the sense of the board was that the rule should be “one lot, one fee.” Tr. at 41.

Mr. Mykytiuk also presented testimony on his own behalf at the hearing. The thrust of Mr. Mykytiuk’s complaint is that Lakes Region is not permitted to charge him a separate base charge and/or install a separate meter under the terms of the Company’s tariff. He offered several exhibits. Exhibit 2 contained pictures showing where the service line comes into the first structure on his property. The photo shows another water line connected to the service line and going to the second structure, and a shutoff valve for that water line after the meter. He does not believe that this is a tandem service. Tr. at 66-67. He also offered a picture of a house owned by another Lakes Region customer, which has one service pipe serving two structures on the customer’s property. Tr. at 68. According to Mr. Mykytiuk, that customer is not paying two base charges. Mr. Mykytiuk claims there are others who pay two base charges, but there is nothing in the tariff requiring them to have separate meters. Tr. at 68-69. Mr. Mykytiuk agreed that the other customers who have single water meters may have installations that predate the Commission’s adoption of its rules. Tr. at 92-93. He claims there is ambiguity in N.H. Code of Admin. Rules Puc 606.04(j), which does not allow for tandem service. Tr. at 95. Mr. Mykytiuk stated that he was threatened with disconnection if he did not allow Lakes Region to inspect the service connection. He complied with the request. Tr. at 74-78.

On cross examination, Mr. Mykytiuk acknowledged that what he actually rents out is his primary residence, and he sometimes stays on the second floor of the new second structure. The main house is rented through a vacation rental by owner program. Tr. at 107-108. He acknowledged that he would have to pay the second base charge if it were in fact in Lakes Region’s tariff. Tr. at 112.

B. Lakes Region

Leah Valladares of Lakes Region testified that Mr. Mason informed Mr. Mykytiuk as early as March 2015 – when construction had started – of the need to install a second service line. Tr. at 120-121. On April 26, 2016, Ms. Valladares sent a letter to Mr. Mykytiuk enclosing an application for service and requesting the service inspection. Tr. at 121. Lakes Region wanted to inspect the line because there was a potential bypass hazard and health hazard. Tr. at 122. Ms. Valladares explained that it was the Company's standard practice to install a separate meter and charge a second base charge on properties with two separate structures. She discussed an exception to the practice, the McGuire property, and said there are plans to set it up with two accounts. Tr. at 130. Ms. Valladares testified that there are two properties in Balmoral that have two structures on them with two separate meters and accounts. Tr. at 127-18. She also mentioned that there was another property in Wentworth Cove that has two dwellings on the property and it is set up with two accounts and two meters. Tr. at 131. Upon viewing Mr. Mykytiuk's second dwelling, Ms. Valladares confirmed that it is approximately 1,575 square feet, is not connected to the main residence and has – to the best of her knowledge – one sink, two baths, two water closets, two lavatories, a shower, a dishwasher and a washing machine. Tr. t 132-34.

Ms. Valladares stated that Lakes Region decided not to disconnect Mr. Mykytiuk in April 2016 after being satisfied that there were no health concerns and that Mr. Mykytiuk had not bypassed recording water usage on the meter. Moreover, Lakes Region did not want to cause an undue hardship on Mr. Mykytiuk. Tr. at 135. Mr. Mykytiuk is current on his billing of the two base charges. Tr. at 136.

Ms. Valladares was asked to describe the connections that were contained in Exhibit 5, which portrayed the water service connections at Mr. Mykytiuk's residence. She explained that a branch connection is one in which the service line branches and goes to multiple dwellings. A branch connection is made prior to the meter. Tr. at 143. She considered a tandem connection to be one which went to a second place of consumption after the meter. Tr. at 145. She viewed Mr. Mykytiuk's arrangement as a tandem connection. She testified that Puc 606.04(h), prohibits any type of branch or tree connection. Tr. at 144. She opined that there would be more costs for supplying the demand to a separate structure. Tr. at 146. Ms. Valladares recommended that a second service line be installed and a meter be installed at the second place of consumption, because, in her view, the current configuration does not comply with the Commission's rules. Tr. at 149.

Ms. Valladares concluded that, financially, the current situation is not fair. Mr. Mykytiuk built a separate dwelling and it should have two service lines, and he should be charged as two customers because he has created "an increased draw on the system." Tr. at 150. Ms. Valladares acknowledged that Lakes Region's tariff refers to a "minimum charge per customer per quarter" which she and the Company typically call the "base charge," but that such minimum charge does not refer to any charges that are levied per unit. Tr. at 168-69. The "metered rate" is the charge for usage and it is measured in hundreds of cubic feet. Tr. at 169. Ms. Valladares admitted that Lakes Region's tariff needs to be revised; that there is no specific working definition about what tandem service is; and that Lakes Region commonly refers to terms like customers, place of consumption, structures and premises, as being individuals as a general rule. Tr. at 171-172.

C. Staff

Mark Naylor, the Director of the Commission's Gas and Water Division, was asked by the Commission to testify. Mr. Naylor confirmed that he sent an email to Mr. Mykytiuk on April 12, 2016, stating that he did not disagree with Lakes Region charging him two base charges for the two structures on his property. He considered it to be a compromise instead of digging up the service connection and installing another service line and a meter. He said it is not correct to assert that adding a second dwelling unit to an existing service does not create cost. It creates demand that must be satisfied by the utility. The utility is required to meet demand every minute of every day, and must be set up to handle peak demand on its system whenever it occurs. He said when you add additional customers, it adds to peak demand. Mr. Naylor read from the American Water Works Association M1 Manual and stated that demand costs are associated with providing facilities to meet the peak rates of use or demands placed on the system by the customers. Tr. at 174-177.

Mr. Naylor agreed with the suggestion that "customer" and "dwelling unit" should be treated synonymously. Tr. at 178. He testified that he considers a tandem service line to be a single service line that serves two end-users or two or potentially more customers. Tr. at 180. A branched service would be before the meter, but he thought that tandem or branched is a distinction without a difference. Tr. at 180-181. To Mr. Naylor, it does not matter in which structure Mr. Mykytiuk actually resides. Whichever one he uses and whichever one he rents, according to Mr. Naylor, "It's a separate place of consumption." Tr. at 184. In this case, it is the second unit that creates additional demand on the system. *Id.* To rectify the situation, Mr. Naylor suggested that what is needed is a clear definition of what a customer is and what a place of consumption is, and a clear definition of how service is formally requested. Tr. at 186.

He thinks a tariff change is in order to make it clearer. Tr. at 187. Mr. Naylor also considered what the effect would be if Mr. Mykytiuk sold the property with two dwelling units on it and they were both then occupied full time. Mr. Naylor said it “furthers the point” that ideally there should be two meters and two service lines because demand may be too much for the meter. Tr. at 190-191.

III. COMMISSION ANALYSIS

The Commission has broad authority to hold hearings on complaints against utilities both by statute, RSA 365:1 *et seq.*, and pursuant to its rules. N.H. Code of Admin. Rules Puc 204. The Commission is charged with setting rates that are just and reasonable. RSA 378:7. Every public utility shall keep on file “schedules showing the rates, fares, charges and prices for any service rendered.” RSA 378:1.

In this case, we find that Lakes Region’s tariff does not specifically address the situation presented here, where Mr. Mykytiuk has built a second dwelling on his property. The tariff refers to “customer(s)” throughout, but there is nothing in the tariff about when a second meter or separate service must be installed, or what is or is not a tandem service as prohibited by our rules under Puc 606.04(j). Our own rules define customer as any person supplied with water by a utility. Puc 602.05. They define service connection as the point of connection between the customer’s service pipe and the utility’s service line. Puc 602.12. What Mr. Mykytiuk has done is to add a new line to his second structure after the metering point in the main residence.

While the tariff does not address the present situation, additional consumption does not come without cost to Lakes Region. If both units are fully occupied, it is incumbent upon Lakes Region under our rules to be able to satisfy peak demand to both structures at the same time.

According to Mr. Naylor, this situation has the potential to create additional demand on Lakes Region's system.

Mr. Mykytiuk points to the new Accessory Dwelling Unit (ADU) law which goes into effect on June 1, 2017, which provides that "separate systems shall not be required for the principal and accessory dwelling units." RSA 674:72 V. That law is not yet in effect and we take no position on whether Mr. Mykytiuk's second structure would qualify as an ADU under the new law, or what the new law may mean in the context of this, or any other case, where an ADU is added to a home after the date the new law takes effect.

Under the terms of its present tariff, there is no basis for Lakes Region to require Mr. Mykytiuk to pay a second base charge every month for his newly constructed unit. We acknowledge that this new unit may create additional demand on Lakes Region's system and expect Lakes Region will propose revisions to its tariff to address similar situations.

Mr. Mykytiuk has met his burden of proof by a preponderance of evidence pursuant to Puc 203.25 in showing that Lakes Region's decision to impose a second customer charge on him is not authorized under its current tariff. Until such time as Lakes Region's tariff is amended, the Company shall not impose a second base charge on Mr. Mykytiuk, and Lakes Region is directed to refund to Mr. Mykytiuk the second base charges it has collected from him to date. The Company is not precluded from making additional inspections in the future. In the event its tariff is revised, the Company shall not require Mr. Mykytiuk to install a second meter in the future so long as he undertakes no further renovations to the structures on his property.

Based upon the foregoing, it is hereby

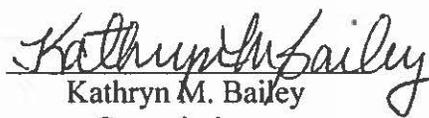
ORDERED, that pursuant to RSA 365:29, Lakes Region shall refund the fees charged to Mr. Mykytiuk for the second base charge, with interest, and it is

FURTHER ORDERED that Lakes Region shall not impose a second base charge on the property at 17 Mayflower Lane in the Town of Moultonborough, or on any similar configuration, until such time as Lakes Region receives approval to impose a second charge under the terms of a properly filed tariff amendment.

By order of the Public Utilities Commission of New Hampshire this fifth day of May, 2017.

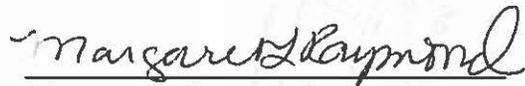


Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Margaret L. Raymond
Assistant Secretary