

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 18-056

LAKES REGION WATER COMPANY, INC.

Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions

Order Denying Motion for Rehearing

ORDER NO. 26,360

May 27, 2020

This order denies the Motion for Rehearing of Order No. 26,340 filed by Lakes Region Water Company, Inc.

I. PROCEDURAL HISTORY

On January 3, 2018, in IR 18-001, the Commission issued Order No. 26,096. That Order directed all public utilities to record a deferred liability to account for the estimated change in tax expense resulting from corporate tax reductions that went into effect on January 1, 2018. The Commission also directed utilities to file company specific proposals by April 1, 2018, on how the reduced expense should be treated and indicated the proposals would be considered in separate dockets.

Lakes Region Water Company, Inc. (Lakes Region or the Company) did not file its proposal in a timely manner. Instead, the Company filed a motion on February 9, 2018, to extend its filing requirements until June 1. In response, the Commission opened this separate docket to consider Lakes Region's proposal. On October 9, after two additional extensions, Lakes Region filed a revised set of settlement schedules based on its most recent rate proceeding. Although the schedules calculated tax savings, the Company failed to propose a plan for the prospective establishment of a revenue requirement reflective of the tax law changes. The

Company also failed to address excess deferred income taxes as required by Order No. 26,096. On July 29, 2019, following a period of discovery, Commission Staff (Staff) filed a recommendation, and on August 9, Lakes Region filed a response.

In Order No. 26,340 (March 26, 2020), the Commission required Lakes Region to record specific annual and cumulative regulatory liabilities to track tax savings realized from corporate tax rate decreases. The Commission also ordered the Company to record a regulatory liability equivalent to its calculated excess deferred income tax reserve.

Lakes Region filed a Motion for Rehearing on April 27, 2020 (Motion). Staff objected to the Motion (Objection). The Company followed with a Motion for Leave to Reply to the Objection (Reply). Additional procedural history is described in Order No. 26,340.

The Company's initial proposal and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2018/18-056.html>.

II. POSITIONS

A. Lakes Region Motion for Rehearing

According to the Company, recording a regulatory liability represents a substantial taking of its property rights and interest in just and reasonable rates, which the Commission cannot require without a hearing under RSA 378:7 and RSA 365:28 and a finding that the Company's current rates are not just and reasonable. The Company asserted anything else would be retroactive ratemaking, which Lakes Region argued is impermissible.

The Company stated that it does not object to recording annual and cumulative regulatory liabilities to track tax savings and to record a regulatory liability equivalent to its calculated excess deferred income tax reserve. Motion at 1. Lakes Region conceded that the Commission

has taken no action to change the Company's rates. Motion at 1 and 3-4. The Company also argued that the accounting treatment in and of itself constitutes a change in rates, or that the possible threat of the change in rates in the future requires a hearing pursuant to RSA 378:7 and RSA 365:28. Motion at 5.

In addition, Lakes Region argued that the Commission incorrectly found that the Company failed to move for rehearing of Order No. 26,096 (January 3, 2018). Lakes Region asserted that the Commission erred in its application of RSA 541:3. According to the Company, Order No. 26,096 was a preliminary procedural order in an investigatory docket, directing all utilities to file proposals to be reviewed in some other proceeding. Lakes Region argued that it complied with RSA 541:3 by presenting its rehearing motion in this proceeding. Motion at 7-8.

B. Staff's Objection

Staff argued that Lakes Region merely repeated its prior arguments and failed to provide sufficient good reason for rehearing or reconsideration. Staff said that Lakes Region's motion merely reasserted those prior arguments with a request for a different outcome. Staff further argued that Order No. 26,340 did not involve ratemaking, but instead imposed an accounting measure pursuant to RSA 374:8. Staff asserted that Lakes Region's ratemaking arguments were not ripe for review, as determined by the Commission in Order No. 26,340. Staff also pointed out the Company acknowledged the Commission did not invoke its ratemaking authority under RSA 378:7, and did not object to the recording of the regulatory liabilities as ordered.

Staff argued that Lakes Region mischaracterized Order No. 26,096 as solely investigatory and not susceptible to a motion for rehearing. Staff maintained that Order No. 26,096 provided a clear directive for utilities to record a regulatory liability – which required Lakes Region to file for rehearing within 30 days, or by February 2, 2018, – and the Company did not do so.

C. Lakes Region’s Motion for Leave to Reply to Staff’s Objection

We grant Lakes Region leave to reply. Lakes Region acknowledged that three of its claims reassert prior arguments. Reply at 1. The Company, however, argued that repetition was necessary to draw the Commission’s attention to a matter it mistakenly conceived in its original decision. *Id.* The Company stated that it was important to obtain a ruling that the Commission would not adjust Lakes Region’s rates in a subsequent rate case without first finding that its current rates were unjust and unreasonable, per RSA 378:7. The Company, furthermore, repeated its concern that the recorded liability “will in fact operate as a rate adjustment that is retroactive to January 1, 2018, without affording Lakes Region a hearing as required by RSA 378:7 to show that it did not charge unjust or unreasonable rates at any time.” Reply at 2. Finally, Lakes Region argued that its Motion addressed all of the allegedly mistaken reasons upon which the Commission based its decision in Order No. 26,096. *Id.* at 2-5.

D. OCA

The OCA did not take a position on the Company’s Motion for Rehearing.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were “overlooked or mistakenly conceived” by the Commission, *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,312 at 8 (November 27, 2019).

We find that Lakes Region has not met the standard for rehearing. As a preliminary matter, we note that the Company conceded that it does not object to the directives to “record annual and cumulative regulatory liabilities to track tax savings realized from recent corporate tax rate decreases” and “to record a regulatory liability equivalent to its calculated excess deferred income tax reserve.” Motion at 1. In addition, the Company acknowledged that the Commission is not “presently invoking its ratemaking authority pursuant to RSA 378” and that absent a change in rates, arguments based on single-issue and retroactive ratemaking are not ripe for review. *Id.*; *see also id.* 3-4. Based on those concessions alone, we find that there are no grounds on which the Commission ought to reconsider its decision, as Lakes Region accepts the accounting methods imposed by Order No. 26,340.

We disagree that requiring the Company to record a regulatory liability constitutes a taking, and that we must declare that we will not adjust the Company’s rates without a hearing under RSA 378:7 or RSA 365:28. We considered those arguments and rejected them in Order No. 26,340. The statutes speak for themselves. RSA 378:7 applies to changes in rates, and the Commission has not ordered such a change. RSA 365:28 applies to the alteration of prior orders, and the Commission has not done so.

Finally, the Company’s arguments regarding the effect of its failure to file a timely motion for rehearing of Order No. 26,096 do not warrant further discussion. Even setting aside that issue, we would reach the same conclusion on the other grounds set forth in Order No. 26,096 and herein.

We understand that Lakes Region disagrees with our conclusions, but that alone is not sufficient to grant rehearing. For the foregoing reasons, we deny Lakes Region’s Motion.


Based upon the foregoing, it is hereby

ORDERED, that the Motion for Rehearing by the Lakes Region Water Company, Inc. is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 2020.

 _____ Dianne Martin Chairwoman	 _____ Kathryn M. Bailey Commissioner	 _____ Michael S. Giaino Commissioner
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Attested by:



Debra A. Howland
Executive Director

Service List - Docket Related

Docket#: 18-056

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