

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 15-209

LAKES REGION WATER COMPANY, INC.

Permanent and Temporary Rate Proceeding

Order Approving Temporary Rates

ORDER NO. 25,862

January 29, 2016

APPEARANCES: Upton & Hatfield, LLP, by Justin C. Richardson, Esq., for Lakes Region Water Company, Inc.; Murray D. Movitz, *pro se*; Douglas L. Patch, Esq., for the Property Owners Association at Suissevale, Inc.; the Office of the Consumer Advocate by Susan W. Chamberlain, Esq., on behalf of residential ratepayers; and Staff of the Public Utilities Commission by Rorie E. Patterson, Esq.

In this Order, the Commission approves a settlement agreement granting Lakes Region authority to implement temporary rates pursuant to RSA 378:27, for service rendered on or after September 14, 2015. The Commission also denies Lakes Region's request to begin recovery at this time of temporary rate revenue for the period between the effective date of temporary rates and the effective date of this Order. As a result, the bill for an average metered customer will increase by approximately \$59 annually, or about \$15 per quarter. The petition and subsequent 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/2015/15-209.html>.

I. PROCEDURAL HISTORY AND POSITIONS OF THE PARTIES

On August 5, 2015, Lakes Region Water Company, Inc. ("Lakes Region"), submitted a permanent rate filing including revised tariff pages designed to increase the Company's annual water revenue from general metered and unmetered customers by a total of \$398,274, or 38.18%.

On August 17, the Company filed a Petition for Temporary Rates (“Petition”) seeking an increase in revenues from general water customers of \$221,487, or 21.23%, to take effect with service-rendered on and after September 14, 2015.

On December 2, Commission Staff (“Staff”) filed testimony recommending a temporary revenue requirement increase for general water customers of \$79,465, or 7.62%. On January 6, 2016, Lakes Region, the Office of the Consumer Advocate (“OCA”), and Staff (“Settling Parties”) filed a settlement agreement on temporary rates, the merits of which the Commission heard on January 14. The final positions of the Settling Parties are embodied in the settlement agreement described in Section II below.

On January 7, Lakes Region filed a memorandum supporting the settlement agreement and asking to begin recovery of temporary rate revenues associated with the period between September 14, 2015, and the effective date of the Commission’s decision on temporary rates, i.e., this Order. The Company sought permission to recover temporary rates back to the date of the request as a surcharge until a final decision is made on the request for permanent rates. The surcharge would be in addition to the temporary rate that would apply from the effective date of the decision on temporary rates until the decision on permanent rates. The Company acknowledged that temporary rates, during the period between filing and the decision on temporary rates, are not normally dealt with until a final rate reconciliation takes place at the end of the case. Nonetheless, the Company argued that without the surcharge, the resulting temporary rate would be too low to be reasonable.

At the hearing, Staff stated that it disagreed with the Company’s surcharge proposal. Staff recommended instead that the Commission follow its usual course of having the uncollected temporary rate from the date of filing to the effective date of the temporary rate order

be part of a reconciliation at the end of the permanent rate case. Staff's witness testified that fluctuating rates can be confusing to customers.

Also at the hearing, Murray Movitz, a Lakes Region customer and intervenor, opposed the settlement agreement and asked the Commission to set temporary rates at the level recommended by Staff in its testimony, specifically an increase of \$79,465, or 7.62%, over Lake's Region's test year water revenues from general customers. The Property Owners Association at Suissevale, Inc. ("POASI"), took no position on the settlement agreement.

II. TERMS OF THE SETTLEMENT AGREEMENT

The Settling Parties recommend that the Commission authorize the Company to implement temporary rates under RSA 378:27 according to the following terms:

- The Company's temporary revenue requirement from general customers¹ will be \$1,146,837, which represents an increase of \$103,694 above the test year water revenues earned from those customers or a 9.94% temporary rate increase;

- For the Waterville Valley Gateway Pool, the Company will charge an annual rate of \$1,597.17, or a quarterly rate of \$399.29.

- For Unmetered General customers, the Company will charge an annual rate of \$687.83, or a quarterly rate of \$171.96; and

- For Metered General customers, the Company will impose an annual Customer Charge of \$541.02, or \$135.26 per quarter, and a usage rate of \$5.26 per hundred cubic feet.

The temporary rates will be effective for service rendered on and after September 14, 2015. Any difference between the approved temporary rates and the approved permanent rates

¹ The majority of Lakes Region's operating revenues derive from service to seventeen water systems whose customers comprise general metered and unmetered customers. Lakes Region also derives revenue from a special contract with POASI, which revenues will be a factor in determining the permanent rates.

may be reconciled back to September 14, 2015, upon the implementation of the new permanent rates (pursuant to RSA 378:29).

III. COMMISSION ANALYSIS

Under RSA 378:27, the Commission may approve reasonable temporary rates for the duration of a proceeding if the reports of the public utility on file with the Commission indicate the utility is not earning a reasonable return on its property used and useful in the public service, and if the public interest so requires. The standard for approval of temporary rates is less stringent than that for permanent rates. *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 660 (1991). RSA 378:27 also contemplates that, in fixing temporary rates, the necessary allocation of costs shall be made by reasonably practical and expeditious means, without such investigation as might be deemed necessary to a determination of permanent rates. *New England Telephone & Telegraph Co. v. State*, 95 N.H. 515, 518 (1949).

Temporary rates serve to mitigate potential rate shock to customers between current rates and the permanent rates established at the conclusion of a proceeding. Both the utility and its customers are protected because, pursuant to RSA 378:29, the temporary and permanent revenue requirements and rates will be fully reconciled upon final disposition of the issues. As a result of reconciliation, the utility will only recover the revenue requirement finally determined, and customers will pay rates no higher than those ultimately authorized.

The record supports the conclusion that Lakes Region is likely not earning a reasonable return on its property used and useful in the public service. Lakes Region's last authorized rate of return on net plant in service was 8.39%. *Lakes Region Water Company, Inc.*, Order No. 25,391 at 16 (July 13, 2012). According to Lakes Region, the pro forma test year reflects a 3.64% overall rate of return. Allowing the Company to receive a return closer to its last

authorized rate of return during the process of establishing permanent rates is warranted and in the public interest. The temporary rate increase proposed by the Settlement is approximately one-quarter of the permanent revenue increase sought by Lakes Region. The overall rate of return associated with the temporary rates in the settlement agreement is 8.01%. We find those levels of customer rates and investor return to be reasonable on a temporary basis during this proceeding.

We appreciate Mr. Movitz's participation in the hearing and his request to set the temporary rates as Staff recommended in its testimony. Nonetheless, we deny his request because the difference between the revenue produced by the temporary rates in the settlement and those recommended by Staff is only approximately 2%, and the settlement likely avoids additional litigation and rate case expenses, which customers would ultimately pay. In addition, customers are protected by RSA 378:29, which will require Lakes Region to refund any revenue collected in temporary rates that exceeds the permanent rate revenue level we will set later in the proceeding.

The Settling Parties recommend that the temporary rates go into effect for service taken on or after September 14, 2015. On September 15, 2015, Lakes Region filed an Affidavit of Publication, dated September 14, 2015, stating that it sent, on September 12 and September 14, a copy of the Order of Notice to all current and known prospective customers, as well as the Clerk of the Towns of Campton, Conway, Freedom, Gilford, Laconia, Moultonborough, Ossipee, Tamworth, Thornton, and Tuftonboro, New Hampshire, by first class U.S. mail. Thus, the temporary rate effective date coincides with the latest date that customers and the towns were notified of the proposed rate changes, and, consequently, they received notice of the rate change and could plan accordingly. We find this effective date to be reasonable and consistent with

Appeal of Pennichuck Water Works, Inc., 120 N.H. 562, 567 (1980). Also, the effective date for temporary rates is the same for all customers and does not depend on the timing of the utility's billing procedures.

We deny Lakes Region's request to recover unbilled temporary rate revenues for the proposed period before the effective date of this order. We do not disagree with the company that temporary rates should be set, and that collection of the temporary rate should begin, early in a rate proceeding. We are not persuaded, however, that under RSA 378:27 an after-the-fact recovery of temporary revenues through a surcharge during the proceeding is the appropriate relief. Also, the use of a temporary rate surcharge on top of the temporary rate increase is not consistent with Commission practice, may confuse customers, and will result in an additional rate change during the proceeding when the proposed temporary rate surcharge ends. Although the statute requires the temporary rates to be fixed "immediately," we construe this requirement to be as soon as reasonably possible after the filing of a temporary rate request, because the statute requires notice and a hearing. To the extent that a utility requires an immediate rate increase it may request emergency relief under RSA 378:9.

In conclusion, we find reasonable, and therefore approve on a temporary basis, an increase in Lakes Region's revenue of \$103,694 above the test year water revenues. Based on the temporary rates as proposed in the settlement, Staff calculated that the bill for the average metered usage² of customers in the Company's service territory will increase by \$59.25 annually, or \$14.81 per quarter. The temporary rates will be effective for service taken on and after September 14, 2015. Any recoupment required by RSA 378:29 (*i.e.*, of the difference between the permanent rate and temporary rate levels), including amounts associated with the

² Average customer usage is approximately 27.89 hundred cubic feet of water per year. Non-metered customer consumption and the consumption of POASI under its special contract are not included in the calculation of the average metered customer usage.

period between the effective date of September 14, 2015, and the effective date of this order, shall be recovered by the Company after the Commission sets the new permanent rates (pursuant to RSA 378:29).

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement between Lakes Region, Staff and the Office of Consumer Advocate is hereby APPROVED; and it is

FURTHER ORDERED, that pursuant to RSA 378:27, Lakes Region Water Company, Inc., is authorized to raise customer rates temporarily by 9.94%; and it is

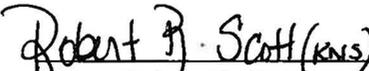
FURTHER ORDERED, that this temporary increase in Lakes Region Water Company, Inc.'s, revenue requirement and customer rates is effective for service rendered on or after September 14, 2015; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 1603, Lakes Region Water Company, Inc., shall submit properly annotated tariff pages consistent with the Settlement Agreement within 10 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 2016.



 Martin F. Honigberg
 Chairman

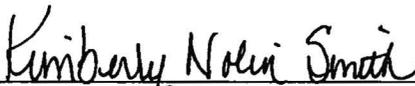


 Robert R. Scott
 Commissioner



 Kathryn M. Bailey
 Commissioner

Attested by:



 Kimberly Nolin Smith
 Assistant Secretary

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov

amanda.noonan@puc.nh.gov

blaze424@hotmail.com

cantonides@roadrunner.com

dmintonsmith@gmail.com

dpatch@orr-reno.com

james.brennan@oca.nh.gov

jayson.laflamme@puc.nh.gov

jrichardson@upton-hatfield.com

lrwater@lakesregionwater.com

lrwater@lakesregionwater.com

mark.naylor@puc.nh.gov

mdevitts@aol.com

ocalitigation@oca.nh.gov

pradip.chattopadhyay@oca.nh.gov

rileymovitz@gmail.com

rileymovitz@gmail.com

rorie.patterson@puc.nh.gov

stephenpstcyr@yahoo.com

steve.frink@puc.nh.gov

susan.chamberlin@oca.nh.gov

INTERESTED PARTIES

RECEIVE ORDERS, NOTICES OF HEARINGS ONLY

JAMIE BURGE
23 LATTIES LANE
CTR OSSIPEE NH 03814

CATHERINE KYLE
175 BOW LANE
NORTH CONWAY NH 03860

SANDY & PETER CARLO
29 OSSIPEE LAKE DR
CTR OSSIPEE NH 03814

DAVID LABRECQUE
26 RAINBOW LANE
THORNTON NH 03285

NANCY CLAIRMONT
16 LINDA LANE
GILFORD NH 03249

DIANE LYNCH

DEBRA DAVIS
195 LIMAC CIRCLE
CTR CONWAY NH 03813

DENNIS MACHNIK
74 ALDEN DRIVE
CAMPTON NH 03223

DANIEL FUCHS
258 BENNETT RD
FREEDOM NH 03836

S MALLON

JAMES & ARLENE HAYES
8 FAIRWAY DR
CTR OSSIPEE NH 03814

DANIEL & ELIZABETH MCCUSKER
7 LATTIE LANE
OSSIEPEE NH 03814

JOHN & DIANA MEYER
39 CAPTAIN LOVEWELL LANE
CTR OSSIPEE NH 03814

LINDA TELLO

JOSEPH MICHAELS
138 E DANFORTH RD
FREEDOM NH 03836

JANE TER KUILE

SCOTT AND JULIE MORRISON
1 RICHARD RD
OSSIPPEE NH 03814

CARLTON & GAIL WAITT
6 FAIRWAY DRIVE
CTR OSSIPEE NH 03814

DENNIS AND SANDY PARCELS
14 FAIRWAY DR
CTR OSSIPEE NH 03814

ROBERT PERRY
10 OLDE LANTERN RD
BEDFORD NH 03110

MIKE AND LIZ SULLIVAN
21 FAIRWAY DR
OSSIPPEE NH 03864

EDWARD TEDESCO

CRAIG ANTONIDES

LAKES REGION WATER

DAVID M SMITH
105 WINDWARD POINT DR
ST SIMONS ISLAND GA 31522

GARY BLAIS

TOM MASON
LAKES REGION WATER COMPANY INC
PO BOX 389
MOULTONBORO NH 03254

STEPHEN P ST CYR
STEPHEN P ST CYR & ASSOC
17 SKY OAKS DR
BIDDEFORD ME 04005

JIM BRENNAN
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST
SUITE 18
CONCORD NH 03301-2429

MURRAY D MOVITZ
121 JUDGES RD
THORNTON NH

SUSAN CHAMBERLIN
OFFICE OF CONSUMER ADVOCATE
21 S FRUIT ST STE 18
CONCORD NH 03301

OCA LITIGATION
OCA LITIGATION
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

PRADIP K CHATTOPADHYAY
OFFICE OF CONSUMER ADVOCATE
21 S FRUIT ST STE 18
CONCORD NH 03301

DOUGLAS L PATCH
ORR & RENO PA
45 S MAIN ST
PO BOX 3550
CONCORD NH 03302

MARK EVITTS

JUSTIN C RICHARDSON
UPTON & HATFIELD
159 MIDDLE STREET
PORTSMOUTH NH 03801

TIMOTHY FONTAINE
LAKES REGION WATER COMPANY INC
420 GOV WENTWORTH HWY
MOULTONBOROUGH NH 03254

SUSAN M RILEY
121 JUDGES RD
THORNTON NH

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.