

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 16-619

**LAKES REGION WATER CO., INC.
DOCKHAM SHORES ESTATES WATER COMPANY, INC.**

Petition to Transfer Utility Assets and Franchise and for Related Approvals

Order Approving Settlement Agreement

ORDER NO. 25,964

November 10, 2016

APPEARANCES: Justin C. Richardson, Esq., Upton & Hatfield, LLP, for Lakes Region Water Co., Inc.; Ethan G. Wood, Esq., Patrick G. Wood Law Office, PLLC, for Dockham Shores Estates Water Company, Inc.; Donald M. Kreis, Esq., Office of the Consumer Advocate, on behalf of residential utility customers; and David K. Wiesner, Esq., for the Staff of the New Hampshire Public Utilities Commission.

In this order, the Commission approves Lakes Region Water Company's acquisition of the assets and utility franchise of Dockham Shores Estates Water Company. The Commission also authorizes Lakes Region to borrow up to \$135,000 to finance the acquisition of utility assets and to make significant improvements to the water system. Finally, the Commission approves modifications to Dockham Shores' tariff, as well as a step adjustment in rates not to exceed \$6,620 following construction of capital improvements. After the closing of the transaction, Dockham Shores will cease to be a regulated utility in the State of New Hampshire.

I. PROCEDURAL HISTORY

Lakes Region Water Co., Inc. (Lakes Region), is a New Hampshire corporation authorized to operate as a public water utility in the State of New Hampshire. Lakes Region currently serves a total of 1,672 customers in 17 separate systems located in the Lakes Region and White Mountain regions of New Hampshire. Dockham Shores Estates Water Company, Inc. (Dockham Shores), is a New Hampshire corporation and a regulated public water utility that

provides service to 60 customers in the Town of Gilford. Dockham Shores is owned by Colin and Mary Robertson, who are its sole shareholders.

On May 31, 2016, Lakes Region and Dockham Shores submitted a joint petition (the Joint Petition) seeking approval to: (1) transfer Dockham Shores' water utility assets and franchise in Gilford to Lakes Region, pursuant to RSA 374:22 & :30; (2) discontinue Dockham Shores' operation as a public utility following the transfer pursuant to RSA 374:28; (3) authorize Lakes Region to borrow an amount not to exceed \$135,000 pursuant to RSA 369:1 & :2, for the purpose of acquiring the Dockham Shores assets and funding capital improvements to the water system; (4) authorize a step adjustment in the rates of Dockham Shores customers, to be filed no later than December 31, 2017, following construction of capital improvements, designed to yield additional revenues of up to \$6,620; and (5) authorize Lakes Region to modify the tariff of Dockham Shores to reflect the existing terms and conditions of service provided by Lakes Region, pursuant to RSA 378:3.

Included with the Joint Petition were the Asset Purchase Agreement (APA), under which Lakes Region will pay \$60,000 in cash for the utility assets; a report detailing the needed capital improvements, including electrical upgrades, telemetry, and pump station improvements; the most recent Sanitary Survey prepared by the New Hampshire Department of Environmental Services; and a term sheet from CoBank ACB (CoBank) indicating that its interest rate for a fully amortizing loan of 20 years was 5.27 percent as of April 29, 2016.

On June 10, 2016, the Office of the Consumer Advocate (OCA) filed a notice of participation. On June 13, the Commission issued an Order of Notice establishing a prehearing conference and technical session for July 7. No petitions for intervention were received.

Following discovery and a technical session, Lakes Region, Dockham Shores, the OCA, and Commission Staff (the Settling Parties) filed an executed settlement agreement, dated September 23, for presentation at a hearing before the Commission held on October 7, 2016.

Lakes Region's 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/2016/16-619.html>.

II. THE SETTLEMENT AGREEMENT

The Settling Parties agreed that Lakes Region should be permitted to acquire the utility assets of Dockham Shores and that the Commission should approve the acquisition, associated financing and tariff revisions requested by the parties, and terminate Dockham Shores' franchise.

A. Transfer of Utility Franchise

The transfer of a utility franchise and its assets is governed by RSA 374:22 and RSA 374:30. Pursuant to RSA 374:22, I, "[n]o person or business entity shall commence business as a public utility within this state ... or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission." The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after a hearing, that the exercise of the right, privilege or franchise is for the public good. RSA 374:26. Pursuant to RSA 374:30, "[a]ny public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state, ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise." In determining whether a proposed franchise or franchise transfer is for the public good, the Commission assesses, among other things, the managerial, financial and

technical expertise of the Petitioners. *See Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

Lakes Region's President, Thomas Mason, and its rate consultant, Stephen P. St. Cyr, testified in support of the settlement agreement at hearing. Mr. Mason testified as to his familiarity with the Dockham Shores system, as Mr. Mason's water system maintenance company has been hired in the past by the current owner to assist in its maintenance and repair. He stated that Lakes Region intended to invest in system upgrades including telemetry and pump station improvements expected to improve safety and reliability. He explained that the Dockham Shores customers would remain on their own currently effective rate schedule, but that Lakes Region may ask to consolidate the Dockham Shores rates with Lakes Region's other customers in the future. Mr. Mason testified that his company would not need additional staff after acquiring the Dockham Shores system, and that Lakes Region is capable of providing emergency service at any time. He believes that Lakes Region's acquisition of the Dockham Shores system is in the public interest.

Staff witness Mark A. Naylor, Director of the Gas and Water Division, testified in support of the transfer of the Dockham Shores assets, stating his belief that Lakes Region possesses the managerial, technical, and financial capabilities necessary to own and operate public utilities. He specifically cited Lakes Region's improved financial circumstances in recent years, and the company's ability to access capital as reasons for Staff's support of the acquisition.

B. Financing Terms

Under RSA 369:1 "a public utility lawfully engaged in business in this state may, with the approval of the commission, but not otherwise issue ... other evidences of indebtedness

payable more than 12 months after the date thereof for lawful corporate purpose.” Under RSA 369:2 “a utility may, with the approval of the commission ... mortgage its present and future property, tangible and intangible including franchises, to secure payment of its bonds or notes.”

Mr. St. Cyr testified with respect to the \$135,000 CoBank loan, the proceeds of which will be used to acquire the system and to undertake capital improvements. He explained that \$60,000 would be used to acquire the Dockham Shores assets, another \$60,000 (approximately) would fund capital improvements, and approximately \$17,000 would cover acquisition costs. He stated that Lakes Region will provide from internal funds any amounts in excess of the \$135,000 to be borrowed from CoBank. The term of the CoBank loan is expected to be 20 years. The interest rate on such loans as of May of 2016 was 5.27 percent. In furtherance of Lakes Region’s loan with CoBank, Lakes Region seeks approval, pursuant to RSA 369:2, to provide a security interest in the acquired Dockham Shores assets, as well as to update its existing mortgage to include the newly acquired assets.

C. Step Adjustment

Both Mr. Naylor and Mr. St. Cyr provided details as to the proposed step adjustment. The step adjustment relates to proposed capital improvements to the Dockham Shores system after the acquisition, including the installation of telemetry, electrical upgrades, and pump station improvements. Witnesses for both Staff and Lakes Region testified that the improvements are needed to continue to provide safe and adequate service to the customers in the Dockham Shores service area. Under the step adjustment provision, Lakes Region can seek up to \$6,620 in new revenues from Dockham Shores customers, as detailed in the Joint Petition. The step adjustment filing must be made no later than the end of 2017. Mr. Naylor testified that, based on the level of

revenues currently generated by the Dockham Shores water system, new revenues of \$6,620 annually represent an increase of just over 21 percent for those customers.

D. Termination of Service

RSA 374:28 provides that the Commission “may authorize any public utility to discontinue ... any part of its service ... whenever it shall appear that the public good does not require the further continuance of such service.” In this case, after approval of the acquisition of the assets by Lakes Region, Dockham Shores will cease to have any assets in New Hampshire. The Commission has found that discontinuing a franchise following the acquisition of that franchise by another utility is for the public good based on a finding that the successor has the financial, managerial, and technical skills necessary to run the system. *See Eastman Sewer Company, Inc.*, Order No. 25,634 (March 11, 2014) at 19-21. The Settling Parties agree that Lakes Region has demonstrated that it has the requisite financial, managerial, and technical skills required to take over and operate the Dockham Shores system.

E. Tariff Revisions

The Settling Parties recommended that the Commission approve, pursuant to RSA 378:3, modifications to the Lakes Region tariff to add the Dockham Shores’ franchise customers into its tariff and to reflect the adoption of Lakes Region’s existing, approved terms and conditions of service. Mr. Naylor testified that Staff expects that Dockham Shores’ existing tariff will cease to exist and that a rate page for the Dockham Shores customers will be added to Lakes Region’s existing tariff as a new service territory with the separate rate page illustrating the rates for Dockham Shores customers.

III. ANALYSIS AND CONCLUSION

Under RSA 541-A:31, V(a), informal disposition may be made of a contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. We encourage parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Granite State Electric Co.*, Order No. 23,966 at 10 (May 8, 2002); *see* RSA 541-A:31, V(a) (“informal disposition may be made of any contested case ... by stipulation [or] agreed settlement”).

The Commission’s procedural rules provide for the approval of a settlement “if it determines that the result is just and reasonable and serves the public interest.” N. H. Code Admin. Rules Puc 203.20(b). Thus, even where, as here, all parties join in the settlement agreement, the Commission cannot approve it without independently determining the result comports with applicable standards. *Granite State Electric Co.* at 11. The process leading up to a settlement is one relevant factor in determining whether we should approve the agreement. In determining whether rates are just and reasonable, the Commission “must balance the consumers’ interest in paying no higher rates than are required with the investors’ interest in obtaining a reasonable return on their investment.” *Eastman Sewer Company, Inc.* 138 N.H. 221, 225 (1994).

The Commission finds the proposed Settlement Agreement to be just and reasonable, in the public interest, and in conformance with all applicable legal standards and we approve it. We agree with the Settling Parties that Lakes Region possesses the managerial, financial, and technical, capabilities to own and operate a public utility in the State of New Hampshire. We find Lakes Region’s planned capital additions will improve the safety and reliability of the

Dockham Shores water system and that the transfer of the franchise is for the public good. We approve Lakes Region's acquisition of the utility assets of Dockham Shores and termination of the Dockham Shores franchise. The Commission finds the resulting rates and proposed step-adjustment reasonable, and approves them.

During the hearing, Mr. Mason committed to the submission of a comparison of the existing Dockham Shores tariff and that of Lakes Region, to highlight those terms and conditions that would not have applied to Dockham Shores customers prior to acquisition by Lakes Region. The Company has not submitted its analysis. To ensure customers are aware of noteworthy changes in the terms and conditions of service, we will require Lakes Region to provide its comparison and work with Staff on an appropriate notice to customers before those changes are applicable to Dockham Shores customers.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that pursuant to RSA 374:22 and :30 Lakes Region may purchase the assets of Dockham Shores and operate as a public utility in the Dockham Shores franchise area; and it is

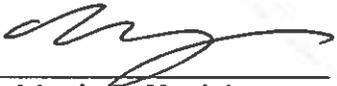
FURTHER ORDERED, that pursuant to RSA 369:1 & :2, Lakes Region may borrow up to \$135,000 from CoBank, on terms and conditions described in the Settlement Agreement and the Joint Petition, and is authorized to provide a security interest in the acquired Dockham Shores assets for this CoBank loan as well as to incorporate the Dockham Shores assets into its existing mortgage; and it is

FURTHER ORDERED, that Lakes Region may file a petition, no later than December 31, 2017, seeking a step adjustment in the rates of Dockham Shores' customers, in an amount not to exceed \$6,620, to reflect the completed capital improvements as detailed in the Settlement Agreement; and it is

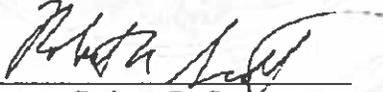
FURTHER ORDERED, that Dockham Shores' franchise is terminated pursuant to RSA 374:28; and it is

FURTHER ORDERED, that Lakes Region shall submit within ten (10) days of the date of this order a comparison of the terms and conditions in Lakes Region's tariff that would henceforth be applicable to Dockham Shores customers as discussed earlier. Lakes Region shall also provide a proposed form of customer notice, for Commission Staff review and approval, of those terms and conditions prior to those terms and conditions taking effect as to Dockham Shores customers. This proposed form of notice shall also be submitted to Commission Staff within ten (10) days of the date of this order.

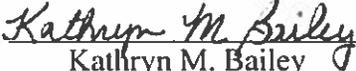
By order of the Public Utilities Commission of New Hampshire this tenth day of November, 2016.



Martin P. Honigberg
Chairman

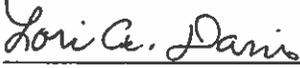


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Lori A. Davis
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.

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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.