

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 13-041
LAKES REGION WATER COMPANY, INC.
Petition for Emergency Rates

OFFICE OF THE CONSUMER ADVOCATE'S CLOSING STATEMENT

The Office of the Consumer Advocate (OCA) opposes Lakes Region Water Company Inc.'s (Company) Petition for Emergency Rates (Petition). The Company's evidence as well as the circumstances leading up to and following the merits hearing do not support a finding that an emergency exists or a ruling approving the Company's proposed "emergency" rate increase. The OCA recommends that the New Hampshire Public Utilities Commission (Commission) deny the Company's petition.

RSA 378:9 states: Whenever the commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto. An emergency is "an unforeseen combination of circumstances or the resulting state that calls for immediate action."¹ Based upon the record, neither "unforeseen circumstances" nor the need for "immediate action" exists in this case.

According to the Company, the circumstances precipitating the filing of its Petition arose after it re-cast in early 2012 its income tax returns for 2007, 2008, and 2009. Around this time the Company also completed its tax returns for 2010 and 2011. The consequences of the Company's amended and new tax filings included the depletion of existing net operating loss and

¹ <http://www.merriam-webster.com/dictionary/emergency>

section 179 carryforwards and the creation of purported income tax liability for 2012.

Notwithstanding the Company's awareness of a possible 2012 tax liability,² the Company chose not to make estimated tax payments in 2012. Instead, during 2012, the Company litigated the customers' responsibility for the tax liability in its then-ongoing rate case and, when those efforts failed, the Company filed the instant Petition in February 2013, nearly one year after the Company created the purported tax liability.

In addition, in spite of its awareness of a possible 2012 tax liability, the Company chose to use its cash flow in other ways including significant distributions to the Company's then-sole-shareholder.³ Aside from the questionable nature and timing of the Company's "return of capital" to this shareholder, distributions of this kind belie the Company's position that it was "unable" to pay its income tax liability as it became due.⁴ The Company's position that its "inability" to pay income taxes at this time is an "emergency" is simply not accurate.

Additionally, since the merits hearing, the Company has responded to record requests in a manner that suggests the absence of a need for immediate action on the income tax liability. The hearing concluded on March 7, 2013 with outstanding deliverables including a number of Company responses to record requests and the filing of closing statements by the parties. Since then, the schedule for satisfying these deliverables has been extended more than once, for a period of more than a month and beyond the deadline for the 2012 tax payment. Like the

² See, e.g., Company's Closing Statement (DW 10-141, 04-09-12), pp. 10-11 (Company requires recognition of income tax expense in revenue requirement calculation because of amendments to prior years' tax returns and exhaustion of net operating loss carryforwards).

³ See, e.g., Company's Response to Record Request #10 (\$127,900.51 in cash and services paid to shareholder in 2012).

⁴ See, e.g., Mason Direct, p. 5, line 13-15 ("In the absence of revenues for taxes in its approved rates, the Company has been unable to make estimated tax payments and may incur penalties and interest for 2012.")

circumstances preceding the Company's filing of its Petition, these delays also suggest the absence of an emergency and weigh against the need for immediate Commission action on the income tax issue.

Further, it is not clear to the OCA that the answer to the Company's income tax issue is an increase in rates. At a time when the Company's sole shareholder is withdrawing its investment and the Company is refusing to seek reasonable debt financing on account of the associated terms, the Company seeks what amounts to 100% customer financing for its operations and 100% customer risk of failure. As observed by Staff during the merits hearing, the Company's expectation of operating a utility without outside investment is unrealistic and unreasonable.⁵ Succinctly, the "clear evidence [is] that the current customer rates are adequate and appropriate. That the Company is cash-starved is not a burden to be placed on customers. The Company's returns indicate that the customers are already paying appropriate compensatory rates."⁶ The Company's method of operation without any outside investment is unsustainable and inconsistent with the Commission's obligation to balance the interests of a utility's shareholders and its customers.⁷

⁵ See Transcript (3-7-13), p. 15, l. 19, - p. 16, l. 12 (testimony of Jayson Laflamme):

The utility rates that the Company is charging are designed to -- with the objective of meeting the Company's current obligations, operating expenses, paying its current debt service, and enabling the Company to earn a sufficient rate of return. However, the rates are not designed with the expectation of paying past accounts payables. They are not designed with the expectation of financing the necessary capital improvements for the Company. These areas need to be -- the funding for these areas need to come from either equity injections from ownership or the acquisition of new debt.

However, in the record from yesterday, it appears that the Company either has an inability or does not desire to access these two other key sources. Hence, all the Company is left with is customer rates. But, unfortunately, customer rates are not designed to finance all areas of the Company's operations.

⁶ Transcript (3-7-13), p. 27, ll. 7-12 (testimony of Mark Naylor).

⁷ RSA 363:17-a.

To the extent that the Company requires an increase in its revenue requirement to cover income tax costs, such a need should be reviewed in the context of the Company's next distribution rate case. Based upon information and belief, the Company plans to file revised distribution tariffs in 2013 to, in part, seek recovery for capital investments in 2012 and 2013. A review of the Company's income tax liability in the context of such a rate case is appropriate and consistent with the Commission's practice of avoiding single-issue ratemaking. A distribution rate case could also serve as a context for discussions about the Company's unsustainable business plan of 100% customer financing and risk.

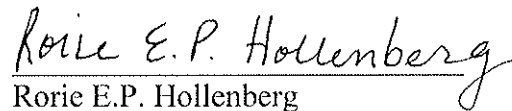
In the alternative, if the Commission is inclined to grant some form of emergency rate increase, the OCA requests the relief include the following terms:

1. The Company is required to use a fully-reconcilable surcharge mechanism to recover the revenues associated with the income tax expense; this will help protect customers from paying more than the Company's actual and prudent tax liability.
2. The Company is required to separately secure, and account for, the revenues received from customers for income taxes; an escrow account and escrow agent could be used for this purpose. Given its present circumstances, which the Company analogized other utilities who were unable to meet cash obligations as they become due and viewed by investors as "high risk,"⁸ as well as the Company's history of missing deadlines including those associated with tax filings and the Company's sizeable outstanding payables, this unusual treatment of expense recovery is particularly appropriate.

⁸ Petition at p. 3, paragraph 8 (citation omitted).

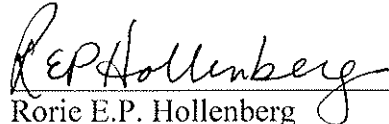
3. The Company is penalized by the Commission for using the services of Mr. St. Cyr and Mr. Roberge in this proceeding. The Company has relied upon these individuals to provide expert regulatory assistance for years and, during this time, the Company has continued to experience significant regulatory issues. Additionally, the performance of these witnesses during this proceeding in particular did not serve the Company or its customers. Setting aside their role in the questionable (and possibly imprudent) decisions of the Company to re-cast prior income tax liability in a manner that was not only incorrect but will likely cause the Company to incur income tax interest and penalties, these witnesses presented inaccurate evidence and inconsistent testimony to the Commission during the hearing on the Petition. Consequently, the Commission should give no weight to their testimony and the Commission should disallow any recovery of the costs associated with these witness' services.
4. The Commission should not permit the Company to recover the costs associated with any interest and penalties related to its 2012 tax liability. To the extent that these costs materialized, they should be borne 100% by the Company's shareholder.

Respectfully submitted,


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Certificate of Service

I hereby certify that a copy of this Closing Statement was provided on this day via electronic mail to the individuals included on the Commission's service list for this docket.


Rorie E.P. Hollenberg