BEFORE THE

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

Lakes Region Water Co., Inc. Docket No. DW 15 – 209

MEMORANDUM IN SUPPORT OF SETTLEMENT AGREEMENT AND RECOVERY OF TEMPORARY RATES

NOW COMES Lakes Region Water Co., Inc. ("Lakes Region"), by and through Upton & Hatfield, LLP, and offers this *Memorandum in Support of Settlement Agreement and Recovery of Temporary Rates* as follows:

I. THE TEMPORARY RATE SETTLEMENT AGREEMENT.

Lakes Region requests that the Commission approve the Settlement Agreement ("Agreement") filed separately this day. Lakes Region petitioned for temporary rates because its existing rates provided for less than a reasonable rate of return in 2014.

According to Lakes Region's petition and schedules, the Company earned an actual rate of return of 3.64% which is well below its approved rate of return (8.19%). Lakes Region has accepted certain modifications recommended by Staff and will amend its Annual Report accordingly. However, the Settling Parties have agreed that the Lakes Region is entitled to a temporary rate increase of \$103,694 (9.94%) above the test year water revenues earned from general customers of \$1,043,143 as set forth in the Agreement and Schedule JPL-1. No testimony or evidence has been offered to suggest that Lakes Region is not entitled to this increase.

The Agreement represents a reasonable compromise and the costs of a full evidentiary hearing far outweigh its benefits, particularly when the Settling Parties agree

that permanent rates are to be reconciled to an effective date of September 14, 2015, as provided by RSA 378:29. Lakes Region requests that the Commission approve the Settlement Agreement.

II. TEMPORARY RATES ARE RECOVERED DURING THIS PROCEEDING.

Lakes Region requests that the Commission decide one issue not directly addressed by the Agreement. Under RSA 378, rate increases may be effective as of "the date on which the utility files its underlying request for a change in its permanent rates." *Appeal of Pennichuck Water Works*, 120 N.H. 562, 567 (1980); RSA 378:3 ("30 days"); RSA 378:6. Lakes Region filed its permanent rate request on August 5, 2015. The Agreement provides for an effective date of September 14, 2015 which is the date of publication of the Commission's *Order of Notice*.

Lakes Region will have already issued bills for nearly five months at existing rates by the time the Commission approves the Agreement. This will result in an "unbilled temporary rate increase" of \$29,363.04 as shown on the attached schedule using Lakes Region's actual bills for period from September 14, 2015 to December 31, 2015 and estimates for January 2015. Recovery of this amount is important to Lakes Region because its existing rates are legally insufficient and because of the costs of this proceeding. Lakes Region therefore requests that the Commission allow it to recover the unbilled temporary rate increase during this proceeding.

Lakes Region submits that RSA 378:27 is clear and directs the Commission to "immediately fix ... for the duration of said proceeding reasonable temporary rates". It also provides that temporary rates "shall be sufficient to yield not less than a reasonable return ... as shown by the reports of the utility filed with the commission". The

Agreement and testimony are clear that Lakes Region's existing rates provide for less than a reasonable return. RSA 378:27 therefore directs the Commission to fix temporary rates "immediately." A delay to the end of this proceeding is unreasonable and would make the promise of immediate rate relief under RSA 378:27 illusory.

RSA 378:27 is also clear that temporary rates are to be effective "for the duration of said proceeding". This means that temporary rates are to be recovered while this proceeding is pending. If recovery of the \$29,363.04 is deferred until permanent rates are set, then the effective temporary rate increase will not be recovered until *after this proceeding*. This is contrary to RSA 378:27 which provides for temporary rates to be effective immediately "for the duration of said proceeding". RSA 378:27 simply does not contemplate recovery of temporary rates after a proceeding has concluded.

III. THE RECOUPMENT STATUTE DOES NOT DELAY RECOVERY OF TEMPORARY RATES

Lakes Region understands Staff's position to be that the recoupment statute, RSA 378:29, provides for recovery of unbilled temporary increases at the conclusion of this proceeding. However, rate recoupment RSA 378:29 is a mechanism to recover "the difference between the gross income obtained from the rates prescribed in such temporary order and the [g]ross income which would have been obtained under the rates finally determined". It is not intended to delay recovery of temporary rates, which are to be fixed "immediately ... for the duration of said proceeding". RSA 378:27.

In fact, delaying recovery of \$29,363.04 would require customers to pay this amount at the conclusion of this proceeding, concurrent with: (1) a permanent rate increase; (2) permanent rate recoupment; and (3) approved rate case expenses. This

conflicts with the intent of RSA 378:29 which directs the Commission to consider the effect of rate increases and minimize overlap of recoupment.¹

IV. CONCLUSION.

RSA 378:27 directs the Commission to "immediately fix ... for the duration of [this] proceeding reasonable temporary rates" which "shall be sufficient to yield not less than a reasonable return". The Settling Parties agree that Lakes Region is entitled to a temporary rate increase as set forth in the Agreement. Lakes Region requests that the Commission fix temporary rates immediately as provided by the Agreement and provide for a reasonable recovery of unbilled temporary rates during this proceeding.

Respectfully submitted,

LAKES REGION WATER COMPANY, INC.

By its Counsel,

UPTON& HATFIELD, LLP

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Portsmouth, NH 03801

(603) 436-7046

jrichardson@uptonhatfield.com

Dated: January 6, 2015

¹ RSA 378:29 directs the Commission to "consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding." The Legislature intended the Commission to minimize overlapping increases, not increase them by delaying recovery of temporary rates until well after their effective date.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded via Electronic Mail to all persons on the Commission's official service list for this patter.

Justin C. Richardson

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