

**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 Directing Lakes Region Water Company, Inc., to Record Corporate Liabilities**

**ORDER NO. 26,340**

**March 26, 2020**

This order directs Lakes Region Water Company, Inc., to record annual and cumulative regulatory liabilities to track tax savings realized from recent corporate tax rate decreases. The Commission also orders Lakes Region to record a regulatory liability equivalent to its calculated excess deferred income tax reserve.

**I. BACKGROUND AND PROCEDURAL HISTORY**

Effective January 1, 2018, federal and state corporate tax rates changed. The enactment of the “Tax Cuts and Jobs Act” (TCJA) reduced the federal corporate income tax rate for most utilities from 35 percent to 21 percent. *Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions*, Order No. 26,096 (January 3, 2018). At the state level, the Business Profits Tax (BPT) was reduced from 8.2 percent to 7.9 percent and the Business Enterprise Tax (BET) was reduced from 0.72 percent to 0.675 percent. *Id.*

In Docket No. IR 18-001, the Commission opened an investigation into public utility treatment of the effects of corporate tax rate reductions and directed each utility to file a proposal addressing those effects no later than April 1, 2018. *Id.* Given the changes in state and federal tax law, each affected utility was ordered to calculate its interim tax savings and record a deferred liability. *Id.* The Commission also directed that each filing include financial

information sufficient to establish a revenue requirement reflecting the effects of those changes on customer rates. *Id.*

The Office of the Consumer Advocate (OCA) filed its letter of participation on April 9, 2018.

On October 9, 2018, after several deadline extensions, Lakes Region Water Company, Inc. (Lakes Region or the Company), filed its proposal. Commission Staff (Staff) developed a recommendation with the assistance of Blue Ridge Consulting Services, Inc. (Blue Ridge). On July 29, 2019, Staff submitted its recommendation with Blue Ridge's report attached, and the Company filed a response to the recommendation on August 9.

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

## **II. POSITIONS**

### **A. Lakes Region's Initial Filing**

Lakes Region provided a revised set of settlement schedules based on the Company's most recent rate proceeding, Docket No. DW 15-209. Those schedules included a total calculated tax savings of \$33,228, comprised of \$28,835 in tax savings related to its last approved revenue requirement and \$4,393 in tax savings related to the initial step adjustment. The tax savings did not include the second step adjustment approved in Docket No. DW 15-209, which was calculated pursuant to the current tax rates. Lakes Region did not address the excess deferred income tax (EDIT), nor did it propose a plan for the prospective establishment of a revenue requirement that reflected the tax law changes.

## **B. Staff**

### **1. Tax Savings**

Staff determined Lakes Region's tax savings by adopting Blue Ridge's findings, partially adjusting to account for Company responses, and applying the Federal Energy Regulatory Commission (FERC) formula for tax reductions to the Company's most recently approved revenue requirement. Blue Ridge and Staff noted that the calculations are consistent with recent Commission rulings in proceedings similar to this. Commission Staff Recommendation at 3 (July 29, 2019).

Staff recommended that the Commission direct Lakes Region to record an annual regulatory liability of \$42,707, to track tax savings realized through the effective date of the Company's next approved base rates in a general rate proceeding. The deferred liability would accumulate, as follows: the 2018 year-end balance would be \$42,707; the 2019 year-end balance would be \$85,414 (\$42,707 + \$42,707); and the 2020 year-end balance would be \$128,121 (\$85,414 + \$42,707).<sup>1</sup>

### **2. EDIT**

Staff recommended that the Commission direct the Company to record a separate regulatory liability for excess deferred income tax of \$141,995. Staff further proposed that the annual amortization of this amount, representing income tax credits to customers, should be resolved in Lakes Region's next general rate proceeding.

Staff concluded that its recommendations provided a full and satisfactory resolution of all issues contained within the instant docket, and recommended that the docket be closed. *Id.*

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<sup>1</sup> This trend, of adding \$42,707 to the prior year's balance would continue until the next full rate case.

**C. OCA**

The OCA concurred with Staff's recommendation.

**D. Lakes Region Response**

The Company requested that the Commission not accept Staff's recommendation. Lakes Region argued that the Commission should instead direct the Company to file a rate case by July 1, 2020, to address the Company's concerns of the tax law change and the impact of those changes on the Company's rates.

Lakes Region offered five arguments in support of its request: 1) approving Staff's recommendation violates the settlement agreement, approved by Order No. 25,969, which did not contain an adjustment for an exogenous event such as a tax law change; 2) the Company has not over-earned based on the tax rate change, as other increasing costs offset the difference, thus Lakes Region's rates remain lawful, just, and reasonable; 3) Lakes Region's lower effective tax rate of 26.4 percent, as acknowledged by Staff, did not result in over-earning by the Company, and approval of Staff's recommendation would result in a regulatory taking of lawfully earned income; 4) approval of Staff's recommendation results in single-issue ratemaking, which is prohibited by the Commission, citing *Town of Hampton*, Order No. 26,263 (June 24, 2019) and *Connecticut Valley Electric Company*, Order No. 23,887 (December 31, 2001); and 5) the Commission lacks authority to order a retroactive refund without notice, hearing, and evidence of unreasonable rates pursuant to RSA 378:7, which provides the authority for the Commission to fix rates.

**III. COMMISSION ANALYSIS**

Under RSA 374:8, the Commission may establish a system of accounts and records to be used by public utilities for their business within this state, may classify them and prescribe a

system of accounts for each class, and may prescribe the manner in which said accounts shall be kept. The Commission's power to regulate utility accounting extends to prescribing methods for an individual utility. *See New Hampshire Electric Cooperative, Inc.*, Order No. 20,671 (November 19, 1992) (granting utility a method of accounting for a promissory note). Pursuant to its authority under RSA 374:8, the Commission ordered every public utility "to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax resulting from the 2017 Tax Act, as well as the estimated reduction in the State of New Hampshire BET and BPT." Order No. 26,096 at 2. The Commission further established the calculation for the deferral, and directed that the result "shall be entered as a deferred liability until final rates are established for the utility in a general rate case, or until otherwise ordered by the Commission." *Id.* The Commission ordered each utility to calculate the excess deferred income tax caused by the tax decrease, and recognize "as a deferred liability the estimated reduction of the utility's revenue requirement." *Id.* Lastly, the Commission ordered each utility to file a proposal "no later than April 1, 2018, to address the effects of the changes in tax laws, including financial information that is sufficient to establish a revenue requirement that reflects prospectively the impacts of those changes." *Id.*

As discussed in Staff's recommendation, we recognize that changes in federal and state tax laws produced savings benefits for the Company. The decrease in the corporate tax rates also produced an EDIT reserve for Lakes Region. The result is that Lakes Region's customers have been paying rates higher than necessary to cover the Company's tax liabilities.

We agree with Staff that the Company should apply the FERC formula to determine the effects of the lower federal and state tax rates. Consistent with prior decisions, we conclude that

use of the FERC formula is a reasonable method to calculate the annual tax savings. *Abenaki Water Company, Inc.*, Order No. 26,251 at 5 (May 10, 2019).

We recognize that the tax savings realized by Lakes Region may vary from year to year based on the actual annual revenues collected. We also recognize that the task of recalculating those tax savings annually could be burdensome because of the complexity of such a calculation, especially where the recalculation will likely result in a *de minimus* difference from the amount identified by Staff. For the minimization of error associated with such calculation, and to ease the administrative burden of time and resources invested by both the Company and Staff, we conclude that the annual tax savings should be accounted for using a set amount. We therefore direct Lakes Region to record the annual and cumulative regulatory liability as of January 1, 2018, and through the effective date of the Company's next approved permanent base rate adjustment, as recommended by Staff. We direct Staff to monitor the Company's annual and cumulative regulatory liability contained in Lakes Region's annual reports filed with the Commission, and to file a recommendation for a subsequent rate proceeding if the resultant accumulation of tax savings warrants such action.

We note that the accumulation of tax savings may generate income for the Company in the form of interest. We conclude, however, that the amount of interest collected will be limited given the tax savings the Company will recognize. Thus, we find it reasonable for the Company to record the deferred liability of the tax savings without an interest component.

We also agree with Staff's recommendation that Lakes Region should record a total \$141,995 EDIT reserve regulatory liability, and that an appropriate amortization period resulting in annual customer credits be determined in the Company's next rate proceeding.

We deny the Company's request to reject Staff's recommendation and instead order Lakes Region to file a full rate case in 2020, for several reasons. First, Lakes Region waived any objection to the accounting requirements mandated by the Commission in Order 26,096. As that Order was issued in a separate docket, DW 18-001, on January 3, 2018, the Company had an opportunity to file a motion for reconsideration within thirty days, or by February 4, 2018. *See Unitil Energy Systems, Inc.*, Order No. 25,915 at 5-6 (June 28, 2016) (motions for reconsideration governed by RSA 541:3, which requires the filing of motion for reconsideration within 30 days of decision); N.H. Admin. R., Puc 203.33. The Company filed its request a full 18 months later on August 9, 2019, which is approximately 520 days beyond the 30-day period to file a motion to reconsider. Accordingly, we rule that Lakes Region waived any objection to the requirements set forth in Order 26,096.

Second, as a matter of fairness, if the Company's request were to be granted, we would effectively be treating Lakes Region differently than every other utility that has complied with the Commission's Order. The Company presented no evidence justifying special treatment, and allowing such disparate treatment would be patently unfair to all other regulated utilities. Accordingly, we deny the Company's request.

Third, the Company's argument that the Commission's decision implements both single-issue and retroactive ratemaking fails as that argument is not ripe for review. *See University System of New Hampshire Board of Trustees v. Dorfsman*, 168 N.H. 450 at 455 (2015) (claim not fit for decision where challenged action is not final). The Commission is not presently invoking its ratemaking authority pursuant to RSA 378, by directing Lakes Region to modify its existing rates or refund customers. Absent a change to Lakes Region's rates, arguments based

on single-issue and retroactive ratemaking are simply not ripe for the Commission's consideration, and we rule as such.

Lastly, the Company's argument that Staff's recommendation, if approved, would violate the settlement agreement terms approved by Order No. 25,969, which set permanent rates for Lakes Region, similarly fails. We are not directing Lakes Region to modify its rates, pursuant to RSA 378 at this time, but merely requiring the establishment of a utility-wide accounting method pursuant to RSA 374:8.

We rule that the treatment of the tax savings, as outlined above, is an appropriate resolution of the issues.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Lakes Region Water Company, Inc., shall address the effects of the decreases in corporate tax rates, as detailed in the body of this order; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc., shall record annual and cumulative regulatory tax savings deferred liabilities in the amount of \$42,707 annually. Such deferred liabilities shall be recorded as of January 1, 2018, until the effective date of the Company's next approved permanent base rate adjustment; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc., shall record a total \$141,995 excess deferred income tax reserve regulatory liability; and it is

**FURTHER ORDERED**, that the issue of an appropriate amortization period resulting in annual credits should be resolved in the Company's next general rate proceeding; and it is

**FURTHER ORDERED**, that Staff shall monitor the amount of tax savings included in the Company's annual and cumulative regulatory liability, contained in Lakes Region Water Company's annual report; and it is

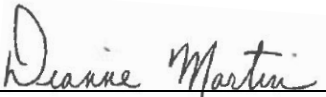


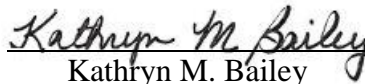
**FURTHER ORDERED**, that Lakes Region Water Company, Inc., shall file a rate case no later than December 31, 2020, utilizing a 2019 test year; and it is

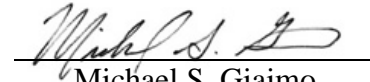
**FURTHER ORDERED**, that Lakes Region Water Company, Inc.'s request is **DENIED**; and it is

**FURTHER ORDERED**, that this docket shall be closed.

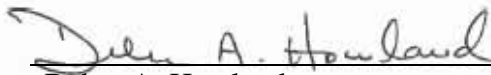
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 2020.

  
Dianne Martin  
Chairwoman

  
Kathryn M. Bailey  
Commissioner

  
Michael S. Giaimo  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**  
**Lakes Region Water Company, Inc.**  
**Docket No. DW 18-056**

***Motion for Rehearing of Order No. 26,340***

NOW COMES Lakes Region Water Co., Inc., (“Lakes Region”) and moves for rehearing of Order No. 26,340 as follows:

**I. BACKGROUND**

Order No. 26,340 directed Lakes Region “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.” Lakes Region does not object and has implemented this directive which will be reflected in its Annual Report.<sup>1</sup> Lakes Region will also, as directed by Order No. 26,340 and as it proposed in this proceeding on August 9, 2019, file a general rate case utilizing a 2019 test year on or before December 31, 2020.

Lakes Region acknowledges that Order No. 26,340 states that the Commission “is not presently invoking its ratemaking authority pursuant to RSA 378, by directing Lakes Region to modify its existing rates or refund customers” and that “[a]bsent a change to Lakes Region’s rates, arguments based on single-issue and retroactive ratemaking are simply not ripe for the Commission’s consideration, and we rule as such.” However, Lakes Region is compelled to move for rehearing or, more correctly, a first hearing,

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<sup>1</sup> Lakes Region requested a 30-day extension to file its Annual Report specifically for this purpose.

because the Commission's Order to record a regulatory liability to its customers retroactively to January 1, 2018 represents a substantial taking of Lakes Region's property rights and interests in just and reasonable rates based on its investment in plant dedicated to serving the public. To do as the Commission has directed, i.e. carry a regulatory liability, both on-going and retroactive to January 1, 2018, to be refunded to customers at some future date, without any finding that Lakes Region's underlying rates are reasonable or not, unlawfully holds Lakes Region entire business hostage. It is imperative that Order No. 26,340 be vacated or clarified to make clear that Lakes Region's rates are not subject to adjustment except as provided by RSA 378:7, i.e. after notice and a hearing and only to the extent that its rates are determined to be unjust and unreasonable. A retroactive adjustment, when Lakes Region has not charged rates that are unjust or unreasonable, is unlawful.

## **II. STANDARD FOR REHEARING**

As the New Hampshire Supreme Court explained in *Dumais v. State Personnel Comm'n*, 118 N.H. 309 (1978), "[t]he purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in this original decision, and thus invites reconsideration upon the record upon which that decision rested." *Id.* at 311 (citing *Lambert v. State*, 115 N.H. 516 (1975) (quotations omitted)). Rehearing is also appropriate where new evidence becomes available which could not have been presented at the hearing. *Appeal of Gas Serv., Inc.*, 121 N.H. 797, 801 (1981); *Dumais*, 118 N.H. at 312.

### **III. LAKES REGION'S RATES WERE LAWFULLY APPROVED, JUST AND REASONABLE.**

Lakes Region's rates were lawfully approved in Docket No. DW 15 – 2009 based on a detailed and comprehensive examination of all of its costs to provide service to the public. Order No. 25,969 approved Lakes Region's permanent rates on November 28, 2016. Order No. 26,142 approved a step adjustment on June 8, 2028. These orders found that Lakes Region's rates were just and reasonable. By law, these rates cannot be changed except after statutory notice and a hearing in cases where rates are unjust and unreasonable.

RSA 378:7 provides that the Commission may adjust rates only "after a hearing had upon its own motion or upon complaint, that the rates ... are unjust or unreasonable". Once issued, the orders approving Lakes Region's rates may only be altered "after notice and hearing". RSA 365:28. However, there is no reason to believe that Lakes Region's lawfully approved rates are unjust or unreasonable. In its August 9, 2019 response to Staff's recommendation, Lakes Region provided the yearly calculations of its actual rates of return based on its investment in plant and its actual tax and other expenses submitted with its Annual Reports to the Commission. These calculations showed that Lakes Region's rates have been just and reasonable at all times.

The changes to the tax rates in 2018 coincided with major investments in new plant and changes in expenses which offset the tax reductions. The result is that taxes, while one factor impacting rates changed as of January 1, 2018, it was offset by others such as inflation in expenses and plant additions. There is no evidence to suggest that Lakes Region's rates exceeded just and reasonable levels.

Whatever changes may be needed to adjust Lakes Region's rates in the future is certainly a matter to be considered in a future proceeding under RSA 378:7. However, the Commission cannot, simply by stroke of the pen, take away Lakes Region's statutory and constitutional right to charge rates that are just and reasonable. It does not matter that the actual refund amount may be ordered at some uncertain time in some uncertain amount. The uncertainty and fear of what the Commission may or may not order as a refund to customers impacts the Company and investors of debt and equity.

#### **IV. AN ADJUSTMENT TO RATES FOR A FUTURE REFUND TO CUSTOMERS CANNOT BE ORDERED WITHOUT A HEARING.**

It is a fundamental principle that utility rates, once lawfully approved, create property rights and interests that are protected by law. Whatever power the Commission may or may not have over utility accounting is beside the point. Rates cannot be adjusted except by following the statutory process. The Commission has directed that Lakes Region maintain a regulatory liability on its books, retroactive to January 1, 2018, without affording Lakes Region a hearing and opportunity to demonstrate that its rates were at all times just and reasonable. RSA 378:7 is clear rates cannot be adjusted by the Commission without a hearing and a finding based on the evidence that existing rates were unjust or unreasonable:

378:7 Fixing of Rates by Commission. – Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be

charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. [...] (emphasis added).

By ordering Lakes Region to record a regulatory liability to customers, retroactive to January 1, 2018, the Commission has imposed a substantial but uncertain liability without affording it a hearing to show that its rates were at all relevant times just and reasonable and do not require any reduction or refund. Lakes Region is entitled to a hearing before a liability, particularly a retrospective one, may be imposed.

**V. THE COMMISSION CANNOT MODIFY OR REVOKE THE ORDERS APPROVING ITS RATES WITHOUT A HEARING.**

Lakes Region's rates were lawfully approved in Docket No. DW 15 – 2009 based on a detailed and comprehensive examination of all of its costs to provide service to the public. That comprehensive examination of Lakes Region's rates resulted in a Settlement Agreement dated October 6, 2016 which provided in part that:

**IV. CONDITIONS**

This Settlement Agreement is expressly conditioned upon the Commission's approval of all its provisions, without change or condition. If such approval is not granted, the Settlement Agreement shall be deemed to be null and void and without effect, and shall not be admissible as evidence or used against any party. The Commission's acceptance of this Settlement Agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the revenue requirement and rates recommended by the Settlement Agreement are just and reasonable. (emphasis added).

On November 28, 2016, the Commission issued Order No. 25,969 which approved the terms of the Settlement Agreement and found Lakes Region's rates to be just and reasonable. In approving the Settlement Agreement, the Commission explained:

The proposed overall revenue requirement is the product of a "meeting of the minds" of the Settling Parties regarding a number of complex issues. The areas of agreement include an appropriate and equitable capital structure, the cost components reflected in the determination of an overall cost of capital, and an appropriate valuation for the Company's rate base. The permanent increase is equal to the previously approved temporary rate increase of 9.94 percent and is proposed to be effective on a service-rendered basis as of September 14, 2015, in accordance with Commission Order No. 25,862. In addition, the initial step adjustment is proposed to be effective on a service rendered basis as of the date of this order. In order to reconcile the revenue difference between temporary and permanent rates, the Settling Parties propose that a surcharge be implemented to collect an amount equal to the difference in revenues the Company would have collected had the agreed upon level of permanent rates been in effect for service rendered after September 14, 2015. The Settling Parties also propose that the revenues generated from the initial step adjustment not be included in the reconciliation of temporary and permanent rates. Further, Lakes Region is to submit its surcharge proposal to the Commission by no later than 30 days from the date of this order and the surcharge shall be subject to the review and recommendations of the Commission Staff, and the OCA. The Commission has previously approved negotiated settlements which include step adjustments. *See, e.g. West Swanzey Water Company, Inc.*, Order No. 25,606 (December 19, 2013). The Commission finds the proposed revenue requirements, rates, and effective dates reasonable and approves them. (emphasis added).

The Commission cannot unilaterally modify its rate approval order and determination that Lakes Region's approved rates are just and reasonable without a hearing.

RSA 365:28 provides that alternations of approved orders can only be made "after notice and hearing" and states:

365:28 Altering Orders. – At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. This hearing shall not be required when any prior order made by the commission was

made under a provision of law that did not require a hearing and a hearing was, in fact, not held.

Order No. 26,340 unlawfully and unreasonably modified Lakes Region's approved rates by imposing a substantial regulatory liability without a hearing as required by RSA 365:28 and RSA 378:7.

**VI. ORDER NO. 26,340 ERRED IN FINDING THAT LAKES REGION  
FAILED TO MOVE FOR REHEARING.**

Order No. 26,340 unreasonably and unlawfully determined that Lakes Region failed to move for reconsideration of the Commission's initial Order No. opening an investigatory proceeding in Docket No. IR 18 – 001. The Commission stated:

First, Lakes Region waived any objection to the accounting requirements mandated by the Commission in Order 26,096. As that Order was issued in a separate docket, [IR ] 18-001, on January 3, 2018, the Company had an opportunity to file a motion for reconsideration within thirty days, or by February 4, 2018. *See Unitil Energy Systems, Inc.*, Order No. 25,915 at 5-6 (June 28, 2016) (motions for reconsideration governed by RSA 541:3, which requires the filing of motion for reconsideration within 30 days of decision); N.H. Admin. R., Puc 203.33. The Company filed its request a full 18 months later on August 9, 2019, which is approximately 520 days beyond the 30-day period to file a motion to reconsider. Accordingly, we rule that Lakes Region waived any objection to the requirements set forth in Order 26,096.

The Commission erred fundamentally in its application of the law on this point. The Supreme Court has made clear, as the Commission itself has done in prior cases,<sup>2</sup> that RSA 541 does not require motions for rehearing be submitted to each and every order

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<sup>2</sup> See e.g. *City of Nashua*, Order No. 24, 948 (2009) (“Pennichuck claims that Nashua waived this argument by failing to move for rehearing of Order No. 24,425, which was issued on January 21, 2005, in which we excluded these two entities. We find Nashua’s motion for rehearing on this issue timely. The scope of the taking was raised early in the proceeding and determined in Order No. 24,425.”).



issued. In *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. 267 (2013), the Court stated:

“... we first consider the petitioners' contention that several of FairPoint's arguments are untimely and should be dismissed because FairPoint did not move for rehearing within thirty days of each of the PUC orders giving rise to these arguments.

Based upon our review of RSA chapter 541, we reject the petitioners' argument. [...] We find nothing in the statutory scheme that supports the petitioners' contention that FairPoint was required to move for rehearing of every PUC order that gave rise to the arguments it has raised on appeal. The record demonstrates that FairPoint timely moved for reconsideration of the orders at issue.”

RSA 541:3 does not require that a motion for rehearing successively be filed during the course of a proceeding. *Cf. Appeal of Courville*, 139 N.H. 119, (1994) (“final decision that began the statutory appeal period.”). Rather, to preserve an issue for appeal it must be “raised during the course of the hearing”. *Appeal of Campaign for Ratepayers Rights*, 133 N.H. 480, 484 (1990). Once a commission renders its final decision, rehearing may then be sought concerning “any matter determined in the action or proceeding, or covered or included in the order”. RSA 541:3. Lakes Region complied with this requirement. Its objections to Staff’s proposal were raised during the course of the proceeding and brought to the Commission’s attention on August 9, 2019, promptly in response to Staff’s recommendation submitted on July 29, 2019.

The Commission erred in its determination that Order No. 26,096 was a final order subject to rehearing and appeal. It was not so. Order No. 26,096 was issued on January 3, 2018 as a general investigation concerning changes to the tax code that were made: “At the end of December 2017, [when] the United States Congress voted and the President signed into law major federal tax law changes<sup>1</sup> (“2017 Tax Act”) effective for

tax year 2018.” Order No. 26,096, Page 1. These changes were not known or understood at the time. No determinations were made in the proceeding, except to require that all public utilities submit proposals for review and approval in a different proceeding. Its docket number, IR 18-001, is that used for an investigative proceeding or rulemaking.

The Commission did not commence a contested case proceeding under RSA 541-A. There were no parties to the order. No appearances were filed. No hearings were held. No evidence was considered. There were no subsequent orders issued in the proceeding. It was a preliminary procedural order directing all utilities to file proposals to be reviewed and approved in some other proceeding. Lakes Region complied with RSA 541 by presenting its case in this proceeding and by submission of this motion pursuant to RSA 541:3

## **VII. CONCLUSION**

Lakes Region respectfully requests that the Commission grant rehearing of Order No. 26,340 and such other relief as justice may require.

Respectfully submitted,

**LAKES REGION WATER  
COMPANY, INC.**

By its Counsel,

**NH WATER LAW**



Dated: April 27, 2020

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service list for this proceeding.

A handwritten signature in cursive script, appearing to read "Justin C. Richardson", written in black ink.

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Justin C. Richardson

**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.

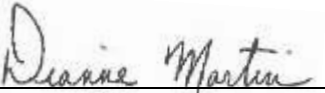
We understand that Lakes Region disagrees with our conclusions, but that alone is not sufficient to grant rehearing. For the foregoing reasons, we deny Lakes Region’s Motion.

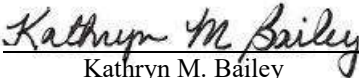


**Based upon the foregoing, it is hereby**

**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. Giaimo  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**IR 18-001**

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

**Order Opening Investigation**

**ORDER NO. 26,096**

**January 3, 2018**

At the end of December 2017, the United States Congress voted and the President signed into law major federal tax law changes<sup>1</sup> (“2017 Tax Act”) effective for tax year 2018. Among other things, the 2017 Tax Act substantially reduces the corporate income tax rate from 35 percent to 21 percent, effective this year. It also affects the deferred tax reserve which must be normalized for the benefit of customers. In addition, in 2018 the New Hampshire Business Enterprise Tax (“BET”) rate will fall from 0.72 percent to 0.675 percent, and the Business Profits Tax (“BPT”) will decline from 8.2 percent to 7.9 percent.

Investor-owned public utilities regulated in the State of New Hampshire recover the costs of the applicable federal and state taxes from utility customers through rates established by the Commission in periodic rate cases specific to each utility. These rate cases allow the Commission to fully investigate the costs and revenues required for the prudent operation of each utility. The revenue impacts of the 2017 Tax Act and the changes in New Hampshire’s business taxes, in general, occur outside of a normal rate case,<sup>2</sup> are likely material, and constitute an event outside the control of the utility.

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<sup>1</sup> H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

<sup>2</sup> The two regulated New Hampshire gas distribution utilities as well as certain water utilities have rate cases pending and due to be completed in 2018.

The Commission determines that it is necessary to investigate<sup>3</sup> how the 2017 Tax Act and the reductions to the BPT and BET will affect the expenses of each of the New Hampshire public utilities. If the changes in the tax laws will reduce the tax obligations and increase the net incomes of those utilities, it will then be necessary to determine how those reduced obligations should be reflected in rates.<sup>4</sup>

To that end, the Commission requires all regulated electric, gas, sewer, and water utilities in New Hampshire to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax resulting from the 2017 Tax Act, as well as the estimated reduction in the State of New Hampshire BET and BPT. The entries for the deferral shall be calculated using the methodology used by the Commission in setting revenue requirements as follows: Each utility shall take the equity currently invested in rate base, multiplied by the last-approved return on equity, to derive an equity return; and then calculate relative to that return the difference between the gross-up for a federal income tax of 35 percent and for a federal income tax of 21 percent and also for the reductions in BET and BPT. The difference shall be entered as a deferred liability until final rates are established for the utility in a general rate case, or until otherwise ordered by the Commission. In addition, each public utility subject to this notice shall calculate the excess deferred tax reserve caused by the reduction in the corporate federal income tax rate, and recognize as a deferred liability the estimated reduction of the utility's revenue requirement.

Each utility shall file a proposal with the Commission no later than April 1, 2018, to address the effects of the changes in tax laws, including financial information that is sufficient to establish a revenue requirement that reflects prospectively the impacts of those changes. The

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<sup>3</sup> Pursuant to RSA 374:4 (duty to keep informed), RSA 374:3 (general supervisory power), and RSA 365:5 (power to independently investigate).

<sup>4</sup> Pursuant to RSA 374:2 (rates must be reasonable) and RSA 378:7 (power to determine reasonable rates).

filing shall include a calculation of any deferred liability accrued by report date and any liability projected to be accrued until the time when final rates are next issued in accordance with a general rate case. It shall also include a plan for providing periodic reports on the accrual and extinguishment of the deferred liability, including an outline of the financial information the utility would expect to file that would be sufficient to establish a revenue requirement that reflects the impact of the tax law changes.

Several utilities have rate cases being investigated by the Commission. Those utilities shall consider whether a rate reduction associated with the reduced tax obligations of the 2017 Tax Act, BET, and BPT, can be effected within the schedule for those rate cases and shall also comply with the filing requirements described herein.

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (“Granite State Electric”) and Unitil Energy Systems, Inc. (“UES”), concluded rate cases within the last year. Their respective rate agreements contain a provision on the method by which they shall manage exogenous events. While changes in tax law are typically treated as exogenous events, the Commission declines to make that finding pursuant to the two approved rate case settlements at this time, and requires both Granite State Electric and UES to comply no later than April 1, 2018, with the reporting requirements as described in this Order.

The Commission intends to open a separate docket for each of the filings received and will consider appropriate rate impacts in those company-specific dockets. The Commission notes that the Office of Consumer Advocate (“OCA”) made a filing described as a complaint on this subject on January 2, 2018. The OCA has the authority to participate in each of the utility-specific dockets pursuant to RSA 363:28 and all utility filings will be served on the OCA pursuant to Commission rule.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at [www.puc.nh.gov](http://www.puc.nh.gov).

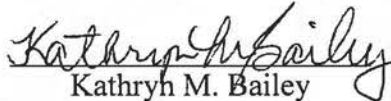
**Based upon the foregoing, it is hereby**

**ORDERED**, all regulated public utilities in the State of New Hampshire shall make filings complying with this Order no later than April 1, 2018.

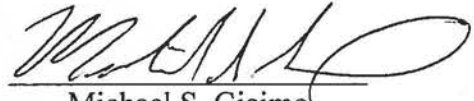
By order of the Public Utilities Commission of New Hampshire this third day of January, 2018.



Martin P. Honigberg  
Chairman

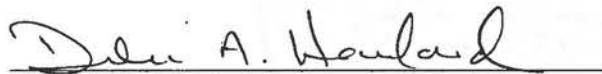


Kathryn M. Bailey  
Commissioner



Michael S. Giaimo  
Commissioner

Attested by:



Debra A. Howland  
Executive Director