

DW 06-133

**PROPERTY OWNERS ASSOCIATION AT SUISSEVALE, INC. AND
LAKES REGION WATER COMPANY, INC.**

Order *Nisi* Approving Special Contract

ORDER NO. 24,693

October 31, 2006

On September 22, 2006, the Property Owners Association at Suissevale, Inc. (Suissevale) and Lakes Region Water Company, Inc. (Lakes Region) filed a joint petition with the New Hampshire Public Utilities Commission (Commission) seeking approval of a special contract pursuant to RSA 378:18. On September 29, 2006, Suissevale and Lakes Region filed a fully executed special contract with the Commission.

Suissevale is a development located in Moultonborough consisting of approximately 350 residential homes. Lakes Region is a regulated utility providing water service in a franchise area known as Paradise Shores that is adjacent to Suissevale in Moultonborough.

According to the petition, Suissevale is an association of homeowners that owns, maintains, and operates its own water distribution system for the sole purpose of providing water to its members. In order to obtain the easement for the water line connection between Lakes Region and Suissevale, which was established in 1994, Suissevale agreed to provide water service to two non-members. Under the terms of the special contract, Lakes Region agrees to provide to Suissevale wholesale water meeting the drinking water quality criteria established by the federal Environmental Protection Agency and New Hampshire Department of Environmental Services. The contract is for a term of 30 years. Suissevale would pay a volumetric rate that is

higher than that charged to the individual Lakes Region customers in Paradise Shores but a lower fixed charge than those same customers.

Suissevale and Lakes Region state that they have a longstanding relationship, Lakes Region having supplied metered water service to Suissevale since 1994. Suissevale and Lakes Region state Suissevale has made capital contributions to a water storage facility that Lakes Region is building in Paradise Shores, which will be used, in part, to serve Suissevale. Suissevale has committed to contributing additional capital to Lakes Region to construct the water storage tank. Suissevale and Lakes Region state that no other Lakes Region customer has made or is expected to make a similar contribution of capital. According to Suissevale and Lakes Region, absent the special contract, water supply to Suissevale could be jeopardized.

On October 10, 2006, Staff filed a letter recommending Commission approval, based on its investigation and discovery conducted in Docket No. DW 05-137, Lakes Region's rate case decided today in a companion order by the Commission. Staff attached to its recommendation the testimony of Stephen P. St. Cyr on behalf of Lakes Region, and the testimony of James L. Lenihan on behalf of Commission Staff from Docket No. DW 05-137, to provide further background on the issues surrounding this special contract.

According to Staff, special circumstances exist that warrant a departure from Lakes Region's filed tariff. In summary form, those circumstances are: Suissevale owns all of the water distribution facilities within the Suissevale development, Lakes Region is responsible only for providing wholesale water to a master meter, Suissevale and its distribution system are located outside of Lakes Region's franchise territory, the master meter is located on the edge of but within the franchise area, Suissevale is unable to provide a source of water supply to its development independent of its connection with Lakes Region, and Suissevale has made a

capital contribution toward the cost of a water storage facility constructed within the Paradise Shores franchise area, which will be accounted for as a Contribution in Aid of Construction (CIAC) and not included in rate base. Lakes Region's ownership and responsibility ends at the master meter at the edge of its Paradise Shores franchise area beyond which Suissevale takes responsibility.

Lakes Region presently supplies Suissevale through a 4-inch master meter at a flat quarterly rate of \$70.84 plus a volumetric rate of \$3.56 per 100 cubic feet. Suissevale consumes approximately 53 percent of the available water produced by the Paradise Shores system.

Staff stated that, for 2006, Suissevale and Lakes Region propose a fixed annual rate of \$366.41 and a volumetric rate of \$4.20 per 100 cubic feet. According to the water supply agreement, Lakes Region may adjust this rate according to a specified formula intended to reflect Lakes Region's actual expenses for the prior year. Pursuant to the formula, Suissevale's rate for 2006 would total \$5,242.96 per month, based on Suissevale's 2005 usage of 1,423,500 cubic feet of water.

Staff stated that the rate adjustment mechanism is based on Lakes Region's Annual Report to the Commission. Within ten days after submitting its Annual Report, Lakes Region would provide Suissevale with a copy of that Annual Report as well and a rate worksheet calculating the actual expenses Lakes Region incurred during the prior calendar year to supply water to Suissevale. Those actual expenses would be used to recalculate the rate for the following calendar year. Suissevale and Lakes Region would reconcile any payments made to date for that year with the new rate. Suissevale agreed to make level monthly payments to Lakes Region, with a reconciliation completed within 30 days of the conclusion of the calendar year.

Staff pointed to provisions in the agreement relating to construction problems at the Paradise Shores water storage tank. Since the storage tank is unusable due to construction or design defects, and while litigation regarding the storage tank is ongoing, Lakes Region agreed to continue to use all reasonable efforts to meet the water needs of all its customers, including Suissevale. In the event of a supply shortage requiring conservation measures or curtailment of water supply, Suissevale and Lakes Region would follow the procedures contained in N.H. Code Admin. Rules Puc 604.07, concerning supply shortages, and Suissevale agreed not to assert claims in court or otherwise against Lakes Region or its officers, directors or employees relating to any water deficiency. Suissevale agreed to abide by water conservation measures that are applied to other Lakes Region customers.

RSA 378:14 generally requires utilities to charge their tariffed rates to all customers. The Commission may deviate from this principle and approve special contracts for services by a public utility “if special circumstances exist which render such departure from the general schedules just and consistent with the public interest.” RSA 378:18.

Having reviewed the proposed special contract between Suissevale and Lakes Region, Staff’s recommendation, and discovery, we find that based on the facts articulated above, special circumstances exist within the meaning of RSA 378:18. Because Suissevale owns its distribution system and has contributed substantially to the construction of a water storage tank, a departure from tariffed rates is logical and appropriate.

We note that the proposed reconciliation mechanism pertaining to Lakes Region’s actual expenses associated with serving Suissevale is unique among water utilities but it is not unheard of in the gas and electric industry. The Commission has previously approved inflation adjustments as well as fuel and purchased power adjustment clauses in special contracts. *See,*

e.g., Northern Utilities, Inc. Order No. 24,478 (July 1, 2005) and *Public Service Co. of New Hampshire*, 83 NH PUC 463 (1998). Lakes Region's annual reconciliation is reasonable and provides a means of ensuring that the cost basis underlying the special contract rate remains accurate.

Lakes Region customers stand to benefit from this special contract. Lakes Region will derive revenues from Suissevale but will not be responsible for water system facilities beyond the master meter. As part of the special contract, Suissevale will make additional financial contributions toward the construction of the water storage tank in Paradise Shores. As Staff stated, Suissevale's contributions to the water storage tank will not be included in rate base. The effect is that Lakes Region will not earn a rate of return on the CIAC portion of the water storage tank, which will mitigate the rate impact to Lakes Region's customers when the storage facility is complete and in service.

The benefits to Suissevale are clear. Without this special contract, Suissevale would not have a water supply. The special contract provides reliable, long term water supply to Suissevale at a cost reasonable to both Suissevale and Lakes Region.

We find reasonable the request that the special contract be effective retroactively to the beginning of 2006. Suissevale and Lakes Region will thus benefit from the continuity of their continued relationship by having what is presently an informal agreement approved by the Commission. We take administrative notice of Lakes Region's rate case, Docket No. DW 05-137, and note that the revenues derived from this special contract are included in the revenue requirement contained in a stipulation agreement presented to the Commission at a hearing held on September 28, 2006. Our approval in this instant docket constitutes our approval of that portion of the revenue requirement that relates to the Suissevale special contract only. All other

elements of the revenue requirement are addressed in a separate order issued today in Docket No. DW 05-137.

Based on the foregoing, it is hereby

ORDERED *NISI*, that pursuant to RSA 378:18, Lakes Region Water Company, Inc.'s special contract with Property Owners Association at Suissevale, Inc. is APPROVED; and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc. cause a copy of this Order *Nisi* to be published once in a newspaper of general circulation in Lakes Region Water Company, Inc.'s franchise area, such publication to be no later than November 10, 2006; and it be documented in an affidavit filed with this Commission on or before December 1, 2006; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than November 17, 2006 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 24, 2006; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 1, 2006, unless Lakes Region Water Company, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of
October, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

ChristiAne G. Mason
Assistant Executive Director and Secretary