

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 16-834

**COMPLAINT OF ROBERT MYKYTIUK AGAINST
LAKES REGION WATER CO., INC.**

ORDER ON MOTION TO DENY COMPLAINT AND EXCLUDE EVIDENCE

O R D E R N O. 25,983

January 31, 2017

With this order the Commission grants in part and denies in part the Motion to Deny Complaint and Exclude Evidence filed in the above-referenced docket by Lakes Region Water Co. Specifically, the Commission denies the Company's request that the complaint be denied without a hearing, limits the scope of the testimony of some of the witnesses, and allows the complainant to testify even though he did not include himself on his witness list.

I. PROCEDURAL BACKGROUND

On October 4, 2016, Robert Mykytiuk filed a complaint with the Commission against Lakes Region Water Co., Inc. (Lakes Region or the Company), alleging that Lakes Region cannot require him to pay an additional quarterly base charge of \$135.26 under the terms of its tariff. The additional base charge relates to a second structure on Mr. Mykytiuk's property located at 17 Mayflower Lane in the Town of Moultonborough.

Lakes Region provides water service to Mr. Mykytiuk's main residence. In March 2016, the Company learned that Mr. Mykytiuk had completed construction of an additional structure on his property. During construction, Mr. Mykytiuk tapped into the service connection to his primary residence in order to supply water to the new structure. Shortly thereafter, Lakes Region

sent a letter to Mr. Mykytiuk requesting an inspection of the water service connection along with an application for service relating to the new structure.

On May 9, 2016, Lakes Region sent a supervisor to the Mykytiuk residence to inspect the new service connection. Lakes Region concluded that the new structure required a separate service connection. Rather than require Mr. Mykytiuk to install a separate service connection for the new structure at his own expense, Lakes Region instead billed Mr. Mykytiuk an additional base charge of \$135.26. That additional charge appeared on Mr. Mykytiuk's June water bill. Mr. Mykytiuk took exception to Lakes Region's interpretation of the terms of its tariff and, in his complaint, submitted that the new structure is an accessory dwelling unit and that he is not required to have separately metered water service.

By letter dated October 11, 2016, the Commission notified Lakes Region and Mr. Mykytiuk that it would treat the matter as a formal complaint. On November 10, 2016, the Commission issued a letter setting a hearing for December 14 and directing the parties to file witness lists, summaries of testimony, and exhibits by November 30. Both parties made timely filings. On December 5, 2016, Lakes Region filed a Motion to Deny Complaint and Exclude Irrelevant Evidence. As a result of that filing, the Commission canceled the December 14 hearing so it could properly address the issues raised in Lakes Region's motion. Mr. Mykytiuk filed an objection to the motion on December 14. The Commission now addresses the issues raised in Lakes Region's motion and Mr. Mykytiuk's response. Mr. Mykytiuk's complaint and all other 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/2016/16-834.html>

II. COMMISSION ANALYSIS

A. Motion to Deny Complaint

In its papers, Lakes Region argues that the complaint should be denied because Mr. Mykytiuk's claim appears to be based on testimony regarding New Hampshire's accessory dwelling unit (ADU) law, RSA 674:72, which does not take effect until June 1, 2017. Under the new law, a municipality that adopts a zoning ordinance under the terms of that chapter must allow ADUs "as a matter of right or by either conditional use permit ... or by special exception, in all zoning districts that permit single-family dwellings." RSA 674:72, I. If a zoning ordinance contains no provisions relating to ADUs, then one unit shall be deemed a permitted accessory use, as a matter of right. RSA 674:72, II. The new law also requires that an applicant for a permit to construct an ADU "shall make adequate provisions for water supply and sewage disposal for the ADU in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units." RSA 674:72, V.

On the legal issues, Mr. Mykytiuk proffers the testimony of Kevin Quinlin, President of the Balmoral Homeowner's Association and a Moultonborough Planning Board Member, and State Representative Karel Crawford, District 4, Carroll County, to opine on their interpretation of the ADU law in general (Quinlin and Crawford) and its effect on Moultonborough's proposed ADU regulation (Quinlin).

The Commission has the authority to exclude irrelevant, immaterial or unduly repetitious evidence, and the rules of evidence do not apply to adjudicative proceedings. RSA 541-A:33. We address the exclusion of testimony of certain of Mr. Mykytiuk's witnesses below. Lakes Region's arguments that the complaint should be dismissed on the grounds that testimony

regarding the ADU law or proposed Moultonboro zoning ordinance relating to ADU's are irrelevant to the proceeding are not sufficient grounds to dismiss the complaint.

The thrust of Mr. Mykytiuk's complaint is that Lakes Region is not permitted to charge him a separate base charge and/or install a separate meter under the terms of the Company's tariff. The Commission has already determined that a hearing on that issue is useful because neither the Commission's rules nor the Company's tariff specifically addresses whether separate charges are permitted or required when an accessory dwelling is installed on a customer's property. We hereby decline to dismiss the complaint and will hold a hearing on this matter subject to the limitations on individual witness testimony outlined below.

B. Motion to Exclude Irrelevant Evidence

1. Kevin Quinlin

Mr. Mykytiuk describes Mr. Quinlin as being well versed in the provisions of RSA 674 that will become effective on June 1, 2017, along with the Town's proposed ADU regulations scheduled to be put before the voters in March of 2017. Mr. Mykytiuk states that Mr. Quinlin will also oppose the proposed fixed charge on the ground that it is not allowed by the Company's tariff or Commission regulations. Mr. Mykytiuk also intends to have Mr. Quinlin testify to a previous conversation with Lakes Region's president, Tom Mason, wherein Mr. Mason allegedly stated that Lakes Region's profitability is dependent on its ability to recover costs through fixed rate charges, and that the Company will need to get the new ADU exemption for separate water systems changed through action in the Legislature in Concord.

The Commission will form its own opinion of the provisions and the applicability of the new ADU statutes to its rules and regulations. We believe that Mr. Quinlin's testimony regarding his conversation with Mr. Mason may be helpful, but we do not believe he possesses

any special expertise on an ADU law that is not yet in effect. We also do not find the testimony of the applicability of a proposed town ordinance on ADU's relevant to the proceeding.

Accordingly, we limit Mr. Quinlin's testimony to the conversations he had with Mr. Mason.

Mr. Quinlin will also be permitted to state the homeowners association's position on the fixed charge and the meaning of the tariff.

2. Crawford Testimony

Mr. Mykytiuk offers the testimony of Rep. Crawford regarding the conversations she had with Amanda Noonan, Director of the Commission's Consumer Services and External Affairs Division, and Leah Valladares, Lakes Region's Utilities Manager, regarding the Mykytiuk situation. Rep. Crawford also intends to opine on her interpretation of RSA 674:72. As discussed above, we do not believe the applicability of legislation that is not in effect at this time is helpful or useful to the Commission, and we will exclude it. Rep. Crawford may testify on her conversations with Commission Staff and Lakes Region regarding this matter.

3. Dawson Testimony

Mr. Mykytiuk offers the testimony of Jake Dawson, a former employee of Lakes Region, regarding the operations of an affiliate, Lakes Region Water Services. According to Mr. Mykytiuk, Mr. Dawson will testify regarding another customer who has a single service line on one property with service to two structures and on whom Lakes Region does not currently impose a separate base charge. We believe that such testimony would be useful to our understanding of the facts in this proceeding, although it would not be dispositive without the development of additional facts. Mr. Mykytiuk also intends to call on Mr. Dawson to offer testimony regarding the status of Lakes Region's bidding procedures related to the installation of Company-installed capital improvements. We do not believe that such information is relevant or

necessary to our understanding of whether a separate fixed charge should be billed to Mr. Mykytiuk by Lakes Region. Accordingly we limit Mr. Dawson's testimony to the water service allegedly provided to another customer with two structures.

4. Mykytiuk Testimony

Lakes Region objects to the proposed testimony of Mr. Mykytiuk on the grounds that he failed to list himself when he submitted his witness list to the Commission. Mr. Mykytiuk is appearing *pro se* in this matter. Regarding our procedural rules, we remind the parties that our Staff is available to them in the event they have questions about compliance with any rule that is applicable to the proceedings in this case. *Re: West Epping Water Co.*, Order No. 23,682 at 4 (April 20, 2001). While Mr. Mykytiuk does not have to testify for himself in this matter, we have expected him to be present and to rely on the allegations he made in his various filings as the basis for his claims. We have also expected him to be subject to cross-examination by Lakes Region and questioning by the Commission. In this instance and on these facts, we do not view Mr. Mykytiuk's failure to list himself as a witness as fatal to his complaint.

Accordingly, we do not deny the complaint instituting this action; we grant in part the motion to exclude or limit the testimony of Mr. Quinlin, Ms. Crawford, and Mr. Dawson as described above; and we will allow Mr. Mykytiuk's full participation in this action as the complainant.

Based upon the foregoing, it is hereby

ORDERED, that Lakes Region's motion to deny the complaint is **DENIED**, and it is

FURTHER ORDERED, that pursuant to RSA 541-A:33, the proffered testimony of Mr. Quinlin, Ms. Crawford, and Mr. Dawson is limited to the matters set forth herein; and it is

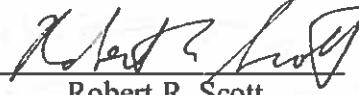
FURTHER ORDERED, that pursuant to RSA 541-A:33, Mr. Mytykiuk be permitted to testify on his own behalf should he desire and that he be available for cross-examination at the final hearing; and it is

FURTHER ORDERED, that this matter be noticed for a hearing to occur on February 22, 2017, at 9:00 a.m.

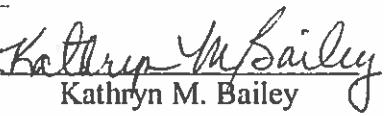
By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 2017.



Martin P. Honigberg
Chairman

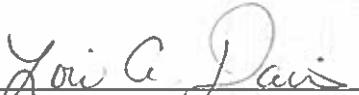


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Lori A. Davis
Assistant Secretary