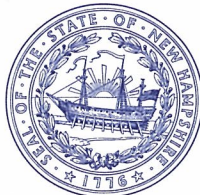


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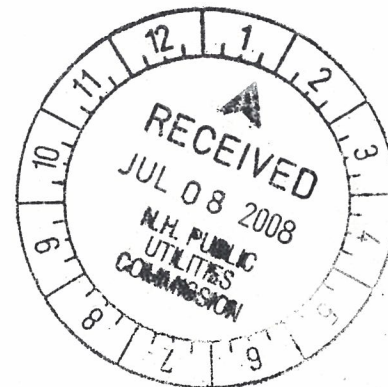
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July 8, 2008

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DW 08-070
Lakes Region Water Co.
Petition for Approval of Financing and Step Increases



Dear Ms. Howland:

Pursuant to RSA 363:17, on July 2, 2008 I conducted the scheduled pre-hearing conference in the above-referenced docket. Please treat this letter as my hearings examiner's report and recommendations.

The Property Owners' Association at Suissevale submitted an intervention request prior to the pre-hearing conference and appeared on July 2 through counsel. The association explained that it is a wholesale customer of petitioner Lakes Region Water Company (LRWC), has made certain contributions in aid of construction, and plans to make additional contributions, to facilitate the tank construction project that is a major element of this proceeding. There were no objections to the intervention request. In my judgment, the association has substantial interests that will be affected by this proceeding and granting the intervention request will advance the interests of justice and efficiency of proceedings pursuant to RSA 541-A:32, I. Therefore, I recommend that the Commission grant the intervention request.

The parties and Staff had an opportunity at the pre-hearing conference to state their initial positions on the petition. The Office of Consumer Advocate (OCA) argued that considering the proposed step adjustments described in the petition would amount to inappropriate single-issue ratemaking. OCA requested that the Commission direct the petitioner to submit a full rate case. However, according to Staff's written report of the technical session that followed the pre-hearing conference, OCA agreed to allowing the instant proceeding to move forward, reserving the right to renew its position later in the proceeding that a full rate case is necessary. It appears that the financing approval requested in this docket may well be critical to the utility's near-term ability to provide safe and adequate service to its customers. Accordingly, I

recommend that the Commission handle OCA's concerns in the manner agreed upon during the technical session.

In Order No. 24,692 (Oct. 31, 2006), 91 NH PUC 516, the Commission approved a settlement agreement entered into among LRWC, OCA and Commission Staff that had the effect of resolving the then-pending LRWC rate case. Among the terms of the settlement were LRWC's agreement to install water meters during 2007 in three of the subdivisions it serves (Deer Cove, LOV and Indian Mound) and request a step increase to finance the project. The Commission addressed this issue at some length in its 2006 order:

In Order No. 24,376 (September 30, 2004), the Commission directed Lakes Region to install meters at Deer Cove and LOV. In Order No. 24,374 (September 23, 2004) the Commission directed Lakes Region to install meters at Indian Mound. These metering requirements were meant to bring these systems into compliance with N.H. Code Admin. Rules Puc 603.03(a) which requires that '[a]ll water sold by a utility shall be billed on the basis of metered volume sales unless a waiver is granted' by the Commission. We understand that Lakes Region has needed to address other more pressing capital improvements. At hearing, Staff witness Lenihan testified that these systems had not had rate increases for considerable periods of time and that consequently their physical conditions had somewhat deteriorated prior to their acquisition by Lakes Region. Mr. Lenihan further indicated that Lakes Region was bringing necessary capital to these systems. Lakes Region's witness St. Cyr also testified as to numerous capital improvements Lakes Region has made and plans to undertake in these three systems, in addition to other capital improvements . . . We understand, given Lakes Region's recent and planned capital improvement projects, that Lakes Region may not have the financial resources at this time to install meters at these systems without a step increase. We find it reasonable to allow Lakes Region to avail themselves of the step adjustment mechanism in order to effectuate our intent that Lakes Region's systems be metered in accordance with Puc 603.03(a). Accordingly, we will allow Lakes Region to submit a request for a step adjustment, consistent with the stipulation agreement, to the Commission for consideration of its meter installation costs for the Deer Cove, LOV, and Indian Mound systems.

Order No. 24,692 at 8-9.

Without requesting formal status as intervenors, three LRWC customers appeared at the pre-hearing conference to complain that LRWC had not made good on this commitment. Two of the three explicitly mentioned their status as seasonal residents who use relatively little water, thus explaining their interest in paying for their utility service on a metered basis as opposed to

a flat rate. It seemed to me that these customers, having taken the time to attend the pre-hearing conference to raise these legitimate concerns, deserved an explanation and thus I invited the utility to provide one. LRWC could say only that “circumstances change” and that, ultimately, the meter installation and associated step increase had not been a priority considering the other issues that confront the utility. This is disturbingly similar to the explanations summarized by the Commission in the excerpt from the 2006 order quoted *supra*.

LRWC suggested that the meters issue would be better addressed in Docket No. DW 07-105, the currently open investigation into the utility’s quality of service. The problem with that approach is that on May 7, 2008 Staff filed a settlement agreement it had entered into with LRWC in DW 07-105 that makes no mention of LRWC’s commitment to install meters in the three subdivisions during 2007, much less holds LRWC accountable for its failure to do what it had agreed to do in its 2006 settlement with Staff (which, itself, amounted to an agreement to comply with a 2004 Commission directive). Although the DW 07-105 settlement calls for the docket to remain open for “monitoring” purposes, that offers no comfort whatsoever to customers who have already watched LRWC ignore its specific commitment to install meters twice without facing any consequences.

In these circumstances, it is my recommendation that the Commission direct LRWC in the pre-hearing conference order to begin the meter installation project ordered in 2004 and 2006 immediately and, if necessary, to incorporate the relevant costs into the pending request for three step adjustments designed to finance other projects. It might be useful, as well, to remind LRWC of RSA 365:41 (providing for civil penalties against a utility that “fails, omits or neglects” to comply with a Commission order) and RSA 365:42 (similar, as to officers and agents of utilities personally).

Finally, at the pre-hearing conference I raised the issue of the effective dates of the three proposed step increases. In its petition filed on May 15, 2008, LRWC requested that the first step increase be effective “immediately,” the second on July 1, 2008 and the third on January 1, 2009. Since LRWC has made no request for expedited or otherwise extraordinary relief, I can only assume that the utility’s true intention is to obtain two step increases, one effective at the conclusion of the proceeding and the second effective in 2009. This is troubling because (1) the first two requested step increases are ostensibly designed to allow LRWC to move forward with critical capital projects, and (2) the proposed procedural schedule calls for hearings on either September 30, 2008 if there is a settlement agreement or October 29, 2008 otherwise. I recommend that the Commission direct Staff to ascertain whether any of these projects are too critical to await a final order of the Commission that would be effective, at the earliest, some time in October. The utility should then be directed to move forward with those projects immediately.

Ms. Debra A. Howland
Docket No. DW 08-070
July 8, 2008
Page 4

In my respectful opinion, the Commission should not move forward with this docket without taking into consideration recent developments in DW 07-105. On June 26, 2008, OCA filed a letter in that docket expressing concerns that LRWC has failed to meet critical deadlines to which it agreed in the proposed DW 07-105 settlement, or even to inform Staff and OCA on a timely basis of its failure to meet those commitments. OCA suggested that these failures may affect LRWC's ability to provide safe and adequate water service to customers.

LRWC offered no response to these allegations. Staff responded on July 3, 2008 by urging the Commission to move forward with the settlement regardless, suggesting (1) that it is appropriate to allow LRWC "reasonabl[e] leeway" in meeting its commitments, (2) that LRWC is in a state of "delicate financial balance," and (2) that DW 07-105 is currently in a "monitoring phase" that presumably should not involve reopening the pending settlement.

While taking no position on whether the Commission should proceed as Staff suggests in DW 07-105, I recommend that the Commission make clear in *this* docket that LRWC should expect not leeway but regulatory vigilance that may include, *inter alia*, (1) directives to proceed more expeditiously than the utility proposes with critical initiatives, and (2) changes to the procedural schedule that are designed to hasten rather than delay further this utility being held to its statutory obligation to provide safe and reliable service.

Subject to those caveats, I recommend that the Commission approve the procedural schedule outlined in Staff's letter of July 2, 2008.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald M. Kreis".

Donald M. Kreis
General Counsel

Cc: Service List