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N.H.P.U.C. Case No.	DW 10-141
Exhibit No.	POASI 1
Witness	John Skelton
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1 THE STATE OF NEW HAMPSHIRE
2 BEFORE THE
3 NEW HAMPSHIRE
4 PUBLIC UTILITIES COMMISSION

5 DW 10-141

6 LAKES REGION WATER COMPANY, INC.

7 Petition for Change in Rate Schedules

8 PRE-FILED TESTIMONY OF JOHN SKELTON
9 ON BEHALF OF PROPERTY OWNERS ASSOCIATION AT SUISSEVALE, INC.

10 October 14, 2011

11 Background and Qualifications

12 Q. Please state your name and address.

13 A. My name is John Skelton. I live at 7 Margaret Lane in Billerica, Massachusetts. My
14 wife and I also own a home in Suissevale at 62 Spitzen Avenue.

15 Q. Why are you involved in this docket?

16 A. I am the President of the Property Owners Association at Suissevale, Inc. ("POASI").
17 POASI or "Suissevale" is a large wholesale customer of Lakes Region Water Company
18 ("LRWC").

19 Q. What is your background and what are your qualifications?

20 A. My wife and I have been members of POASI since 1998. I have been a member of the
21 POASI Board of Directors since 2003, and have served as President since July 2008. I
22 am a partner in the law firm of Bingham McCutchen LLP. I am resident in the firm's
23 Boston office.

24 Q. What is the Property Owners Association at Suissevale, Inc.?

25 A. POASI is a homeowner's association responsible for the governance of a residential
26 community named Suissevale located in Moultonborough, New Hampshire on the shores
27 of Lake Winnepesaukee. Suissevale was first developed in the early 1960s as a seasonal
28 vacation community. There are currently 418 houses in Suissevale with 372 on the
29 community water system. While the majority of members are still seasonal, there are
30 now approximately 75 year-round homes in Suissevale.

31 Suissevale is managed by the Board of Directors with the assistance of a part-time
32 business manager and staff. POASI provides various services to its members including
33 recreational facilities such as a community beach, marina, tennis courts, and a club house

34 and infrastructure services, most significantly, maintenance of over 26 miles of private
35 roads and a community water distribution system.

36 **Purpose of Testimony**

37 **Q. What is the purpose of your testimony?**

38 A. The purpose of my testimony is to provide some background for the Commission and the
39 other parties interested in this docket concerning the relationship between POASI and
40 LRWC and to provide some input for the Commission from POASI's perspective on the
41 important issues raised by this docket and the other dockets that are being considered.

42 **Background on POASI and LRWC**

43 **Q. What is POASI's relationship to LRWC?**

44 A. POASI is a wholesale water customer of LRWC. We currently purchase water from
45 LRWC which is then distributed to individual homes in Suissevale through the POASI
46 owned distribution system. We pay for a single connection to the Paradise Shores water
47 system and then based on the amount of actual water consumed.

48 **Q. When did POASI become a customer of LRWC?**

49 A. We first contracted with LRWC in the mid 1990s. Suissevale was originally developed
50 with its own community water system with its own wells, pumps, storage tanks and water
51 lines, etc. Because of problems with the original development, there were significant
52 water system related problems leading many members to install their own wells. In the
53 mid- to late-1970s, POASI started to address the community water distribution system by
54 repairing or replacing much of the original distribution system.

55 In the early to mid-1990s, because of water quality and well capacity issues, POASI
56 negotiated and entered into a long-term Water Supply Agreement with LRWC. Pursuant
57 to that agreement, POASI became a single wholesale water customer of LRWC and its
58 Paradise Shores water system. LRWC installed a single 4-inch water line from the then-
59 existing Paradise Shores water system that primarily served the adjacent Balmoral
60 community across Shannon Brook and into Suissevale. There was a single meter which
61 measured Suissevale's water consumption. Pursuant to the original Water Supply
62 Agreement, Suissevale paid a single connection charge and the then-existing rate for the
63 actual amount of water consumed. This was a very good deal for both LRWC and
64 POASI. For LRWC it received significant additional annual revenue for minimal, if any,
65 additional operating costs because LRWC had no responsibility other than installing and
66 maintaining the single water line from the existing Paradise Shores system to Suissevale.
67 While POASI still bore the cost and risk of installing, maintaining, repairing the
68 distribution system it did not have to incur the costs associated with securing new water
69 sources to replace its existing wells.

70 **Q. Besides supplying water, did LRWC provide any other services to POASI?**

71 No. As a wholesale customer, Suissevale was responsible for installing, maintaining and
72 repairing its water distribution system on the Suissevale side of the meter and all costs
73 associated with such maintenance or repairs. LRWC had no responsibility for any of the
74 distribution infrastructure within Suissevale. Suissevale currently is responsible for
75 maintaining over 26 miles of water line, and since the mid-1990s, Suissevale has spent
76 approximately \$1.8 million on operating and upgrading its water distribution system.
77 While its records are not as complete, Suissevale estimates that, prior to the mid-1990s, it
78 spent over \$1 million operating and upgrading the Suissevale water distribution system.
79 Both before and after the first Water Supply Agreement entered into with LRWC in the
80 mid-1990s, Suissevale has always paid for 100% of all of the water distribution
81 infrastructure costs within Suissevale.

82 **Q. Please describe how POASI and its relationship to LRWC is different from that of**
83 **other LRWC customers.**

84 A. The critical difference between POASI and all of the other customers of LRWC is that
85 POASI owns all of the water distribution infrastructure (i.e., water lines, valves, pumps,
86 etc.) and is financially responsible for that infrastructure and the actual operation of the
87 water system. The only obligation of LRWC is to supply safe and adequate water to
88 meet POASI's needs to the water meter at the Shannon Brook connection. LRWC has no
89 other responsibility. So, unlike other customers, if there is a leak, a defective valve, a
90 broken pump, etc., POASI must pay the repair and maintenance costs. That is a
91 significant annual cost for POASI. It also represents a significant risk for POASI if there
92 is a major leak or other infrastructure issue.

93 In addition to all of the infrastructure-related maintenance and installation costs, POASI
94 also pays for a licensed operator to provide the necessary oversight, water quality testing,
95 etc. for the Suissevale system. While all of those costs are generally included in the rate
96 paid by LRWC customers, those are costs born independently by Suissevale.

97 **Q. How does POASI deal with day-to-day operational issues such as leaks or other**
98 **water system problems?**

99 A. Throughout the years, Suissevale has contracted with an independent water service
100 contractor, which happens to be the affiliate of LRWC, to provide the water related
101 services to Suissevale. Those services include day-to-day maintenance, repairing leaks,
102 repairing or replacing valves, pumps, water lines as needed and all water sampling and
103 testing-related responsibilities.

104 **Q. At some point, did POASI negotiate a new Water Supply Agreement with LRWC?**

105 A. Yes. In 2006, POASI negotiated and executed with LRWC a new Water Supply
106 Agreement. A copy of the 2006 Water Supply Agreement is attached as Exhibit 1. The
107 new Water Supply Agreement was negotiated in connection with LRWC's construction
108 of a 375,000 water storage tank located off of Route 109. LRWC proposed the new
109 storage tank in order to address storage and supply-related issues for the Paradise Shores
110 water system, which since the early 1990s had included Suissevale as a customer. At the
111 time, LRWC sought a financial contribution in aid of construction from POASI.
112 Pursuant to a separate Water Contribution Agreement, Suissevale agreed to pay to
113 LRWC \$300,000 toward the cost of constructing the water storage tank contingent upon
114 LRWC agreeing to a new long-term Water Supply Agreement which protected POASI
115 long term with respect to LRWC's commitment to provide water. A copy of the Water
116 Storage Contribution Agreement is attached hereto as Exhibit 2.

117 **Q. Why did POASI link the contribution in aid of construction for the Water Storage**
118 **project with a New Water Supply Agreement?**

119 A. In 2006 when LRWC proposed constructing the new water storage tank and sought
120 financial assistance from POASI, LRWC's position was that constructing a 375,000
121 gallon storage tank would allow LRWC to serve, without interruption, the entire Paradise
122 Shores system into the future. This was important for POASI's long-term planning
123 because in 2006 there were already over 300 houses within Suissevale on the water
124 system with the potential for some limited additional growth. Also, because both
125 Balmoral and Suissevale are predominantly seasonal communities there are historically
126 peak periods of demand during the summer months, especially the summer holiday
127 weekends. According to LRWC, the construction of the 375,000 gallon water storage
128 tank, which we understood exceeded the then-DES storage requirements, was designed to
129 meet the seasonable supply needs for the entire Paradise Shores system. Further, the
130 Water Storage Tank located above Route 109 would allow for a gravity fed system which
131 was supposed to provide sufficient pressure to Suissevale throughout its entire system
132 eliminating the need for electric pumps, etc. which were then being operated by
133 Suissevale. LRWC also committed that it would replace approximately 1000 feet of 4-
134 inch water line within the Paradise Shores system because it is a pinch point that reduces
135 water pressure impacting the service to Suissevale. Because LRWC's was seeking a
136 contribution of \$300,000, which represented a cost of approximately \$800 per household
137 on the water system, POASI was only going to make that commitment if the water
138 storage tank represented a long-term solution to the water supply deficiencies and
139 provided a basis for a new longer term Water Supply Agreement between LRWC and
140 Suissevale. After lengthy negotiations, during which both LRWC and Suissevale were
141 represented by counsel, LRWC and Suissevale entered into a new long-term Water
142 Supply Agreement.

143 **Q. From POASI's perspective, what are the key terms of the Water Supply**
144 **Agreement?**

145 A. The Water Supply Agreement set forth the terms and conditions under which LRWC is
146 required to supply water to Suissevale as an existing customer of the Paradise Shores
147 system. It is for an initial term of 30 years with four 5-year renewals. It also contains a
148 formula pursuant to which the annual rate to be charged to POASI over the life of the
149 agreement is determined and adjusted each year. That formula provides a credit based on
150 the contribution made by POASI to the cost of the water storage tank and takes into
151 account future capital investments made specifically to serve POASI as a Paradise Shores
152 customer. The Water Supply Agreement does not require that POASI obtain its water
153 from LWRC.

154 **Q. Was the Water Supply Agreement submitted to the PUC?**

155 A. Yes. The Water Supply Agreement was also presented to and approved by the PUC. A
156 copy of the PUC order is attached hereto as Exhibit 3. That was an important factor for
157 POASI. Because we were making a substantial financial commitment to LRWC
158 (\$300,000) POASI wanted to insure that the Water Supply Agreement was reviewed and
159 approved by the PUC. LWRC also had an obligation under NH law, RSA 374:18, to
160 obtain the Commission's approval of this Agreement as a special contract, which the
161 Commission gave. In granting its approval to the Water Supply Agreement, the
162 Commission noted a number of benefits which the Agreement provided to both parties.

163 **Q. Are there any other state actions that have been taken with regard to POASI that**
164 **are helpful in providing background on the issues raised by this docket?**

165 A. Yes. It also important to point out that even though POASI owns and is responsible for
166 its water distribution system the Commission determined that it should not be considered
167 to be a public utility. A copy of the PUC order granting POASI an exception from being
168 deemed a water utility is attached hereto as Exhibit 4. Also attached hereto as Exhibit 5
169 is a copy of the letter from the New Hampshire Department of Environmental Services
170 ("DES") stating that POASI is not a public water system.

171

172 **POASI's Involvement in Docket and Concerns about LRWC**

173 **Q. Why did POASI become involved in this docket?**

174 A. POASI became concerned when it was notified in the spring of 2010 of LRWC's request
175 for a rate increase which included a request for approval by the PUC for the projected
176 costs of the development of additional wells on what is referred to as Mt. Roberts. In its
177 PUC filings, LRWC sought approval to spend approximately \$1.5 million to develop
178 additional water supply wells on Mt. Roberts, land currently owned by the LRWC
179 shareholders. LRWC had previously drilled test wells on the Mt. Roberts property and

180 during the high use summer season obtained approval from the NH DES to use the Mt.
181 Roberts wells on an emergency basis to fill the water storage tank. When the projected
182 \$1.5 million cost was applied to the formula in the Water Supply Agreement, the annual
183 cost to Suissevale more than doubled. That was unacceptable. The potential cost to
184 POASI of the Mt. Roberts project is exacerbated by the fact that LRWC has also stated
185 that in order to serve POASI most effectively there should be a separate dedicated water
186 line directly from the water storage tank down Route 109 to Suissevale completely
187 bypassing the Paradise Shores system within Balmoral. While we have not sought formal
188 bids for the construction of such a water line, the cost to POASI of such a dedicated water
189 line is likely to be in excess of \$600,000. POASI intervened in the docket and requested
190 information concerning the Mt. Roberts development.

191 **Q. What are POASI's concerns with respect to the Mt. Roberts project?**

192 First, because the Water Storage Project provided over 375,000 gallons of storage
193 capacity, it was supposed to address the long-term water supply issues for the Paradise
194 Shores system. Had LRWC stated in 2006 that in addition to the significant capital
195 contribution it was seeking for construction of the water storage tank that it also would be
196 looking to invest upwards of \$1.5 million on additional well sources in the very near
197 future, there is a very serious question whether POASI would have agreed to go pay
198 \$300,000 towards the water storage tank. It may have sought at the time to explore other
199 water source options.

200 Second, POASI is also very concerned with the circumstances surrounding LRWC's
201 development of the proposed Mt. Roberts project. For example, it is troubling that the
202 Mt. Roberts land is not owned by LRWC. Rather, it was purchased by the LRWC
203 shareholders, and the circumstances of that purchase were not pursuant to a long-term
204 strategic or business plan by LRWC. LRWC management has told POASI that the land
205 was originally purchased for \$250,000 essentially as a favor to a former LRWC
206 employee.

207 Third, assuming that additional source capacity for the Paradise Shores system is needed,
208 it appears that there has not been a strategic or business evaluation by LRWC of
209 alternative sources that would justify the Mt. Roberts project. For example, it does not
210 appear that LRWC, either at the time of locating the water storage tank or otherwise
211 explored or evaluated the potential location and cost of development of alternative well
212 sources. Indeed, it appears that the Mt. Roberts land was purchased prior to a formal
213 evaluation of the likelihood of existing water sources on the property and whether those
214 sources were positioned in such a manner that they could be developed for large
215 extraction wells consistent with the DES set-back requirements

216 Also, prior to the utility spending any monies evaluating water sources or drilling wells
217 and thus committing itself to development of the Mt. Roberts land, it should have either
218 acquired the land in its own name or negotiated and executed a reasonable purchase
219 option giving it the right to acquire that land on behalf of the utility. Also, if it believed
220 that there was a long-term need for additional water sources to supply the Paradise Shores

221 system even after constructing the 375,000 gallon storage tank, LRWC should have
222 evaluated whether there were other potential water sources that could be developed
223 economically prior to committing to building the water storage tank or acquiring the Mt.
224 Roberts land.

225 Fourth, while LRWC has drilled test wells on the Mt. Roberts land and uses those wells
226 on a temporary emergency basis during the peak summer season, those wells have not
227 been permitted or approved by the DES for permanent use, and POASI understands that
228 there are set-back issues given the location of the wells on the property that limit the
229 ability of LRWC to permit and develop the wells as large extraction wells. Those set-
230 back issues raise further questions as to the reasonableness of the Mt. Roberts project.

231 Fifth, it is very troubling that the \$1.5 million development request submitted by LRWC
232 to the PUC was based upon a purchase by LRWC of the land from the shareholders for
233 \$750,000 when the original purchase price paid by the shareholders was only
234 approximately \$250,000. It was not in any way a reasonable arms length transaction.
235 POASI believes that the fact that LRWC even proposed a \$750,000 purchase price
236 represents a total disregard by LRWC for the best interest of its customers.

237 Finally, to the extent that LRWC did not have the financial resources necessary either to
238 purchase the Mt. Roberts property initially in its own name or to negotiate a reasonable
239 purchase option, that in and of itself causes POASI significant concern about the long-
240 term financial viability of the utility.

241 **Q. What role has POASI played in this docket and the settlement discussions related to**
242 **this and the other dockets?**

243 A. POASI has been very involved in this docket and the most recent settlement discussions.
244 By letter from counsel dated March 23, 2011, LRWC withdrew the request for a step
245 increase associated with the Mt. Roberts project, and therefore deemed it unnecessary to
246 respond to any further data requests related to Mt. Roberts. Nonetheless, POASI has
247 remained involved with this docket as well as the other related dockets because they
248 raise, in POASI's mind, serious questions as to the managerial competence and the long-
249 term financial viability of LRWC, and because LRWC and the other parties expressed a
250 desire to seek a "global settlement" of all issues outstanding at the Commission. As such,
251 POASI has tried to participate to the greatest extent possible in the various discussions in
252 order to protect its interests and to see if a long-term viability plan for LRWC could be
253 established. I have participated personally in virtually all of the settlement meetings and
254 discussions since the spring of 2011. John Barba, the Treasurer of POASI, has also
255 attended several meetings in person. I, along with other members of the Suissevale
256 Water Committee, have also met separately with representatives of LRWC and its
257 counsel to discuss the relationship between LRWC and Suissevale. In addition, POASI
258 has also incurred significant legal expense associated with these proceedings.

259 **Q. What are some of POASI's concerns about LRWC?**

260 A. At this point, POASI is concerned about the long-term financial viability of LRWC and
261 its ability to fulfill its obligations under the Water Supply Agreement at a just and
262 reasonable price. As noted, POASI is very concerned given the actions taken by LRWC
263 in connection with the Mt. Roberts project and its request for PUC approval of \$1.5
264 million towards the development of Mt. Roberts. POASI is also concerned about the
265 demands and requirements of the D ES in connection with the Paradise Shores water
266 system and LRWC's ability, financial and otherwise, to satisfy those requirements.
267 POASI does not believe that the current management of LRWC has the ability to manage
268 its affairs long term effectively and to serve the needs of its customers.

269 **Evaluation of Other Resources Available to POASI**

270 **Q. Has POASI been evaluating other ways of obtaining water for its members?**

271 A. Yes. In light of the various dockets and proceedings before the PUC, and POASI's
272 concern about the long-term financial viability of LRWC and the reasonableness of Mt.
273 Roberts project, notwithstanding the Water Supply Agreement and the fact that it
274 contributed \$300,000 toward the construction of the water storage tank, in 2011 POASI
275 began to evaluate other potential sources of water for its members. Since the early 1990s,
276 when POASI negotiated the first Water Supply Agreement with LRWC and shut down
277 the various low volume wells located throughout its association footprint, POASI has
278 acquired two large tracts of land. One tract is approximately 10 acres located in the
279 Shannon Brook water shed, and another is a 44 acre parcel located between Route 109
280 and Lake Winnepesaukee. Suissevale has since contracted with HydroSource Associates,
281 Inc. which has conducted a Phase I and Phase II evaluation of potential water sources on
282 these parcels and neighboring land.

283 In addition to meeting with HydroSource, POASI is also currently in discussions with a
284 water system engineer concerning the requirements necessary if POASI were to proceed
285 with developing its own well sources, storage capacity, pumping infrastructure, etc.

286 So far, since these proceedings began, POASI has spent in excess of \$24,000 on
287 engineering studies and consultants as part of its evaluation of alternative sources.

288 **Q. Where does POASI stand with this analysis of other resources that might be**
289 **available?**

290 A. HydroSource has completed its Phase I and Phase II evaluation of potential water sources
291 and has identified several potential locations for test wells. The next step is to drill test
292 wells. That, of course, represents a significant financial investment by POASI. Although
293 we are hopeful, it is not clear whether those test wells will produce the amount of water
294 necessary to serve Suissevale. We had hoped that the recent discussions among LRWC,
295 Staff, the OCA and the parties to these dockets would have provided more clarity as to
296 whether there is a viable future plan for LRWC or a successor to LRWC that can fulfill
297 LRWC's obligations under the Water Supply Agreement.

298 **Q. Why has POASI been looking into alternative water sources?**

299 A. POASI has been evaluating potential water source alternatives in order to protect the
300 long-term interest of its members. The POASI Board of Directors is committed to
301 providing to its members a safe, reliable and cost effective long-term source of water. It
302 is obviously concerned about the long-term financial and managerial capabilities of
303 LRWC, including the potential for a receivership proceeding, and thus LRWC's ability to
304 fulfill its obligations under the Water Supply Agreement.

305 **Q. Has POASI made a final determination on how it should proceed with respect to**
306 **LRWC?**

307 A. No. POASI made a substantial financial commitment to LRWC when it contributed over
308 \$300,000 toward the construction of the water storage tank. At the time, POASI
309 executed a 30-year Water Supply Agreement which included four 5-year renewal options.
310 POASI believed that by contributing to the storage tank and executing the Water Supply
311 Agreement it had secured a long-term and reliable water supply. It has been actively
312 involved in the ongoing discussions to try to determine whether there was a realistic long-
313 term viability plan for LRWC. At this point, POASI is simply exploring all potential
314 options in order to determine how best to serve the interest of its members. It is
315 obviously concerned about the managerial capacity and the financial stability of LRWC.
316 What happens in these proceedings will be important.

317 **Discussion of Alternatives**

318 **Q. Has POASI been open to discussing alternatives with LRWC that would keep it as a**
319 **LRWC customer in the long term?**

320 A. Yes. Although I cannot go into details about particular alternatives because of a
321 Confidentiality Agreement executed by POASI and LRWC, POASI has had discussions
322 with LRWC concerning various alternatives which might provide a basis on which
323 POASI would remain a long-term customer of LRWC. Generally, those discussions,
324 though they never progressed very far, were intended to explore potential scenarios
325 pursuant to which POASI might assist with or participate in the development of the water
326 resources necessary to serve the Paradise Shores portion of the system.

327 **Conclusion**

328 **Q. Is there anything else you would like to add?**

329 A. Yes. During the period from 2005-2007, when it contributed \$300,000 toward the
330 construction of the water storage tank and executed the new Water Supply Agreement,
331 POASI believed that it had secured a safe, reliable and economically viable source of
332 water for its members long term. Since that time, we have become very concerned about
333 the managerial competence and financial viability of LRWC. The decision making
334 associated with the Mt. Roberts acquisition and its proposed development, as well as

335 many of the other actions reflected in these dockets, creates serious doubt in POAST's
336 mind as to the business and strategic planning capabilities of LRWC's current
337 management and the company's financial capacity to meet its obligations under the
338 Water Supply Agreement as well as the various requirements of the DES.

339 **Q. Does this complete your testimony?**

340 **A. Yes, it does.**