

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**

- 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-DBS 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 LRWC.

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. LRWC 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 [REDACTED]  
242 [REDACTED]?

243 A. [REDACTED]  
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. [REDACTED]  
247 [REDACTED]  
248 [REDACTED]  
249 [REDACTED]  
250 [REDACTED]  
251 [REDACTED]  
252 [REDACTED]  
253 [REDACTED]  
254 [REDACTED]  
255 [REDACTED]  
256 [REDACTED]  
257 [REDACTED]  
258 [REDACTED]

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 DES 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 [REDACTED]

318 Q. [REDACTED]  
319 [REDACTED]

320 A. [REDACTED]  
321 [REDACTED]  
322 [REDACTED]  
323 [REDACTED]  
324 [REDACTED]  
325 [REDACTED]  
326 [REDACTED]

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.