



JUSTIN C. RICHARDSON

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Via Electronic Mail Only

Debra A. Howland, Executive Director
NH Public Utilities Commission
21 South Fruit Street, Suite 10,
Concord, N.H. 03301-2429

Re: DW 19 – 135 Petition for Approval of Long-Term Debt
Lakes Region Water Co., Inc.

Dear Executive Director Howland:

I write to advise that Lakes Region Water Co., Inc. (“Lakes Region”) concurs with Staff’s Recommendation to the Commissioners dated August 14, 2020. In particular, Lakes Region agrees with and supports Staff’s conclusion that the proposed “use of funds is appropriate and the financing is consistent with the public good and should be authorized pursuant to RSAs 369:1 and 4.”

Lakes Region does have one important concern: Staff states that it “has not done a prudence review” (Page 1) and that the review conducted by its independent engineer “applied to the reasonableness, and not the prudence, of the Projects.” (Page 6). As set forth herein, Lakes Region requests that the Commission make a finding that the projects are a prudent use of the proposed long-term debt and consistent with good utility practice and the public good. The comprehensive review conducted by Staff in this proceeding supports such a finding.

Lakes Region agrees that a separate prudence review is required in rate cases under RSA 378:28. However, by statute, a determination that proposed financing is “consistent with the public good” includes a review of “the purpose or purposes to which the securities or the proceeds thereof are to be applied”. RSA 369:1. By necessity, this includes a determination that a utility’s decision to finance one or more projects is prudent and reasonable under the circumstances. Review of the prudence or reasonableness of projects in financing proceedings benefits both the utility and its customers by allowing major projects to proceed in a timely manner, without having to wait for their inclusion and approval as step increases in rate cases.

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I. SCOPE OF FINANCING REVIEW

RSA 369:1 expressly requires review of the “purposes to which the securities or the proceeds thereof are to be applied”. RSA 369:4 also requires that the Commission “determine the actual or probable cost incurred or to be incurred” and whether the financing is “consistent with the public good.” The Supreme Court has explained that financing approval is not “limited to the determination of whether the terms of the proposed financing are in the public good.” *Appeal of Easton*, 125 N.H. 205, 213 (1984). Rather, “the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good -- a determination which includes considerations beyond the terms of the proposed borrowing.” *Id.* (emphasis added). In *Appeal of Conservation Law Foundation*, 127 N.H. 606, 612 (1986), the Supreme Court further explained that the scope of financing review includes a proposed project’s “incremental cost”; the cost of “alternative ... sources and a comparison”; “the reasonableness of the company’s rates that would result” and other appropriate matters.

The Commission’s duty under *Easton* is to determine whether a financing is “reasonable taking all interests into consideration.” *Conservation Law Foundation, supra*, 127 N.H. at 614, quoting *Grafton Elec. Co. v. State*, 77 N.H. 539, 542 (1915). The Commission is “obligated to determine whether the object of the financing [is] reasonably required for use in discharging a utility company’s obligation, which is to provide safe and reliable service” and to determine “whether the company’s plans to accomplish that object were economically justified when measured against any adequate alternatives; and whether the capitalization resulting from the utility company’s plans would be supportable.” *Conservation Law Foundation*, 127 N.H. at 614 (emphasis added). The goal is to ensure that customers are not “affected injuriously” by a capitalization so high that the utility “will not be able to give its consumers at reasonable rates the service to which they are entitled...”. *Appeal of Conservation Law Foundation, supra*, 127 N.H. at 615 quoting *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708, 718 (1985) and *N.H. Gas & Electric Co.*, 88 N.H. 50, 57 (1936). This purpose can only be achieved by reviewing whether the projects proposed are a “prudent” or “reasonable” investment and reasonably required to serve the public.

In the decades following *Easton* and *Conservation Law Foundation*, the Commission has repeatedly reviewed and determined whether the proposed projects to be financed were prudent under the circumstances. The following examples are offered:

- In *Pittsfield Aqueduct Company, Order No. 25,772* (2015), the Commission stated, “we find that the project is a prudent use of the proposed long-term debt and consistent with good utility practice and the public good.” See also *Pennichuck Water Works, Order No. 25,774* (2015) (same); *Pennichuck East Utility Order No. 25,773* (2015) (same).
- In *Lakes Region Water, Order No. 25,753* (2015), the Commission stated that “Staff specifically reviewed the projects to be financed by the CoBank loan and concluded that they were reasonable, prudent, and consistent with the public good.” See also *Pennichuck East Utility, Order No. 25,746* (2014) (same).

- In *Hampstead Area Water Company, Inc., Order No. 24,592* (2006), the Commission stated that “the intended use of the proposed financing for the purchase of the water system assets is both prudent and in the public good”.
- In *Pennichuck Water Works, Order No. 24,510* (2005), the Commission approved a settlement agreement stating that “the proposed use of the proceeds and the financing are prudent and consistent with the public good pursuant to RSA 369.”
- In *Hanover Water Works Company, Order No. 24,468* (2005), the Commission stated that “we find that ... the proposed use of the funds is prudent, and that the financing is consistent with the public good pursuant to RSA 369.”.
- In *Pennichuck East Utility, Order No. 24,450* (2005), the Commission stated that “...we find that the terms and conditions of the financing are reasonable, that the proposed use of the funds is prudent, and that the financing is consistent with the public good pursuant to RSA 369.”
- In *Lakes Region Water Company, Order No. 24,401* (2004), the Commission stated that “we find that the terms and conditions of the loan are just and reasonable and the proposed use of the funds to be prudent and in the public good.”
- In *Pennichuck Water Works, Order No. 24,395* (2004), the Commission approved financing noting that “Staff indicated that ... the proposed use of the funds is prudent.”
- In *White Rock Water Company, Order No. 24,378* (2004), the Commission stated that “we find that the terms and conditions of the loan are just and reasonable and that the proposed use of the funds is prudent. Therefore, the financing is consistent with the public good.”
- In *Pennichuck East Utilities, Order No. 24,375* (2004), the Commission found that “the proposed [use] of the proceeds is prudent and that the financing is consistent with the public good.”
- In *West Swanzey Water Company, Order No. 24,206* (2003), the Commission found that “the terms and conditions of the loan are just and reasonable and the proposed use of the funds to be prudent and in the public good.”
- In *Pennichuck Water Works, Order No. 23,459* (2000), the Commission found that “the proposed use of the funds to be prudent and in the public interest and the terms and conditions of the loan to be just and reasonable.”
- In *Rosebrook Water Company, Order No. 22,933* (1998), the Commission found that “the proposed use of the funds to be prudent and in the public interest and the terms and conditions of the loan reasonable.”

Based on the foregoing, Lakes Region requests that the Commission find that the financing of the projects is prudent and consistent with the public good as required by RSA 369:1 – 4 and *Easton*.

Of course, Lakes Region agrees that in every rate case, the Commission is required to investigate and determine whether utility plant to be included in rates is “prudent, used, and useful”. RSA 378:28. However, this requirement in rate cases is not intended to narrow or limit the scope of financing review in this proceeding. Consistent with RSA 369:1 – 4 and *Easton*, Lakes Region invites the Commission to embrace all of the evidence set forth in Staff’s extensive report and confirm that Lakes Region’s decision to finance the projects using the proposed long-term debt is prudent and reasonable under all of the relevant circumstances, and consistent with good utility practice and the public good. Lakes Region needs such a finding if it is to move forward with the proposed financing and construct the projects that are required to serve the public. If the Commission has significant concerns, they should be identified in this proceeding, rather than after Lakes Region has made considerable expenditures in reliance on the Commission’s determination that the use of the proceeds is consistent with the public good.

II. REQUEST FOR FINDINGS OF FACT

In light of the above, Lakes Region requests that the Commission make the following findings of fact pursuant to RSA 541-A:35 based on Staff’s report:¹

1. Staff retained an independent engineer, Douglas W. Brogan, P.E., who reviewed Lakes Region’s projects to be financed by CoBank. Staff also discussed the Dockham Shores and Wildwood projects with the New Hampshire Department of Environmental Services (NHDES). *Staff Report*, Page 2.
2. Mr. Brogan prepared a report summarizing his findings that the Projects appear reasonable from the standpoint of the necessity for the various system upgrades, and the reasonable nature of the proposed upgrades, themselves. In the opinion of Staff, including Mr. Brogan, the projects and the terms of the loan are reasonable, and the financing is in the public good. *Staff Report*, Page 2.
3. Staff contacted NHDES analyst Richard Skarinka, P.E. to discuss whether interconnecting Wildwood to the Conway Village Fire District (CVFD)² is a viable, less-costly alternative to installing a new pump station. Mr. Skarinka raised several possible concerns with that proposal, including whether CVFD’s water source could adequately supply both its own customers and those on the Wildwood system. Mr. Skarinka also spoke with CVFD’s Water Superintendent, Steve Anderson, about an interconnection south along Route 16 to the Wildwood

¹ RSA 541-A:35 states, inter alia, that: “If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.” The Commission’s rules do not address proposed findings of fact. Lakes Region’s requests are therefore organized so as to follow as closely as possible the findings made in Staff’s report.

² Staff’s report inadvertently referred to the Conway Village Water District. However, the District is technically known as the Conway Village Fire District.

development. Mr. Skarinka reported that Mr. Anderson estimated the cost of a 12-inch main extension of 1,600 feet, the distance to interconnect, would be approximately \$200,000, not including engineering services. Mr. Anderson also stated that the section of Route 16 in the proposed interconnection area “is narrow and that any water main might have to be located within the paved roadway, which NHDOT frowns upon.” *Staff Report*, Page 6.

4. With regard to the replacement pump station at Dockham Shores, Mr. Brogan attested that the ‘As Constructed’ cost, \$274,906, is in line with that of similar pump stations in New Hampshire. He concluded that the new pump station is well built, reliable, and appropriately sized, and likely to eliminate equipment failures, water shortages, outages, and other problems associated with the old system. *Staff Report*, Page 6.
5. With regard to the proposed new pump station at Wildwood and based on its design, Mr. Brogan stated that it is essentially the same as the replacement at Dockham Shores. Its estimated cost of \$260,000 is roughly 5% less than the cost of the Dockham Shores pump station and is also in line with that of similar pump stations in New Hampshire. Mr. Brogan noted that customers have complained about Wildwood’s system failures, inadequate water pressure, water shortages, and conditions related to the water itself, including its taste, odor, color, and propensity for staining fabric when used for laundering. Mr. Brogan concluded that the proposed Wildwood pump station replacement appeared reasonable. *Staff Report*, Page 6.
6. As explained in Lakes Region’s response to Staff Data Request 5 – 2, Lakes Region estimated the costs of an alternative to construct an interconnection to the CVFD be a minimum of \$213,000, not including costs imposed by the NHDOT. *Staff Report*, Page 169.
7. In addition, as explained in Lakes Region’s response to Staff Data Request 5 – 2, an alternative interconnection to the CVFD would require Lakes Region’s customers to pay the CVFD charges for water over the life cycle of the project. Municipal rates can be changed at any time, without a public hearing. RSA 38:28. Under CVFD’s current rates, there would be an initial \$1,000 connection fee per unit. $49 \text{ units} \times \$1,000 = \$49,000$ that CVFD would assess. CVFD’s current 2020 bulk water rate is \$0.01 per gallon. Wildwood used 1,067,396 gallons last year which results in \$10,673.96 plus a yearly demand charge of \$2,100.00. This means that current CVFD rates would result in annual charges of approximately \$12,773.96 that would be charged to customers. Even if CVFD rates did not change, this would result in customer charges of approximately \$255,479.20 over the first 20 years which would likely exceed the cost of the pump station. *Staff Report*, Page 170.
8. Based on the foregoing, the costs of a main extension of a minimum \$213,000 (Lakes Region) or \$200,000 (Staff), plus CVFD charges of \$255,479.20 or some

other amount, plus Lakes Region's retail rates, means that an interconnection to CVFD would be an uneconomical imprudent alternative.

9. Lakes Region's decision to finance the Dockham Shores and Wildwood projects is reasonably prudent and consistent with the public good.
10. Mr. Brogan reviewed the two proposed main replacement projects at Paradise Shores. Mr. Brogan stated that both proposed water main replacement projects, with costs totaling \$158,000, appear reasonable. *Staff Report*, Page 6.
11. With regard to his overall opinion of the financing for the four projects, Mr. Brogan concluded that "[t]he proposed borrowing appears reasonable from the standpoint of the various system upgrade needs addressed." *Staff Report*, Page 7.
12. Lakes Region's current capital structure is approximately 25% debt and 75% equity. The proposed financing would result in a capital structure of 36% debt and 64% equity. With Lakes Region's capital structure less weighted towards the more costly equity financing and more in favor of less costly debt financing, Staff anticipates the Company's overall cost of capital will be lower, which is more favorable to ratepayers. Lakes Region estimates that the financing will reduce the Company's weighted average cost of capital from 8.69% to 8.24%. *Staff Report*, Page 7.
13. Under the Company's existing rate structure, the impact of the financing would result in a 0.35% increase to Lakes Region's current consolidated revenue requirement and would increase the respective current stand-alone revenue requirements of Dockham Shores by 40.73%, and Wildwood by 94.23%. While the increase is significant for Dockham Shores and Wildwood customers, increased revenue requirements of this nature may be required in small systems for necessary and reasonable infrastructure improvements, particularly where catastrophic failure and poor water quality are at issue. If the Company were to request inclusion of both the Dockham Shores and Wildwood systems in a consolidated rate, and if approved by the Commission, the impact of the financing would result in a 3.59% increase to Lakes Region's consolidated revenue requirement. *Staff Report*, Page 7.
14. Mr. Brogan's report indicates that the cost for each of the proposed projects appears reasonable. Staff gave weight to the fact that no less-costly or more favorable alternatives were identified, despite Staff's investigation and the Company's efforts to identify one. In Mr. Brogan's opinion, "The proposed borrowing appears reasonable from the standpoint of the various system upgrade needs addressed." Company president Mason and consultant Mr. St. Cyr stated that the financing is in the best interest of Lakes Region and its customers, and that replacement of the pump stations, at Dockham Shores and Wildwood, and the water mains, at Paradise Shore and Robin Lane, will increase the reliability of the systems. *Staff Report*, Page 7.

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15. Analysis of the public good involves looking beyond the actual terms of the proposed financing to the use of the funds and the effect on rates to insure the public good is protected. *Appeal of Easton, 125 N.H. 205, 211 (1984)*.
16. Based on the foregoing, the proposed projects are a reasonable and prudent use of the proposed long-term debt under the circumstances and consistent with good utility practice and the public good.
17. However, the Commission retains the authority to review the prudence of actual expenditures as provided by RSA 378:28.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,



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Cc: DW 19 – 135 Service List