

Before the New Hampshire Public Utilities Commission

DW 10-141

Lakes Region Water Company Rate Case and  
Consolidated Dockets DW 07-105, DW 10-043 and DW 11-021

**JOINT MOTION *IN LIMINE* TO STRIKE PORTIONS  
OF LAKES REGION WATER COMPANY'S REBUTTAL TESTIMONY**

NOW COMES the Office of the Consumer Advocate (OCA) and Property Owners Association at Suissevale ("POASI") and move to strike portions of the Rebuttal Testimony of Thomas Mason, President of Lakes Region Water Company (LRWC) ("Mason Testimony"); Robert Montville, President of Montville, a business consulting firm ("Montville Testimony"); and Stephen P. St. Cyr, President of Stephen P. St. Cyr & Associates ("St. Cyr Testimony") (collectively "LRWC Rebuttal") submitted on behalf of the LRWC, and in support thereof, state as follows:

1. On July 19, 2010 LRWC filed a request for both temporary and permanent rates. ("LRWC Rate Case Filing"). The Company sought a permanent increase of 40.74%, as well as a step increase for the "Mt. Roberts" property and projects.
2. On February 18, 2011 the Commission approved a Settlement Agreement between Commission Staff (Staff) and LRWC, which included a temporary increase of 18.51% (Order No. 25,196).
3. The Company withdrew its proposal for a step increase for Mt. Roberts in a letter filed on March 23, 2011.
4. Since that time, the procedural docket has been delayed several times to allow the parties opportunities to explore settlement of all four consolidated dockets.

5. On October 14, 2011 Staff, OCA and POASI filed testimony in the consolidated dockets.
6. On December 12, 2011 LRWC filed the testimony of three witnesses: Thomas Mason, Robert Montville, and Stephen P. St. Cyr.
7. The stated purpose of the LRWC Rebuttal was to respond to the Staff, OCA and POASI testimony. However, most of the “rebuttal” testimony is really a new rate increase proposal, which includes new information about the Company’s operations, a new alternative ratemaking proposal, and lacks supporting analysis or other documentation. In other words, most of LRWC’s “rebuttal” does not rebut the Staff’s and OCA’s testimony that LRWC lacks the requisite financial, technical and managerial ability to maintain its franchise. Further, on account of the timing of the “rebuttal” filing, the parties were unable to conduct discovery on the new information and proposals contained therein.
8. Rebuttal evidence is defined as “Evidence given to explain, repel, counteract, or disprove facts given in evidence by the opposing party.” Black’s Law Dictionary, Sixth Edition (1990). *See* Re TDS Alternative Form of Regulation, Order No. 25,103 (DT 07-027, May 14, 2010) slip op. at p. 18. Rebuttal testimony, therefore, is not intended to enable a party – and particularly a filing party who bears the burden of proof – to submit new information in support of the party’s case in chief. *See, e.g.,* Re Public Service Co. of New Hampshire, 71 N.H. P.U.C. 547, 549 (1986). In other words, rebuttal testimony is not an opportunity for a filing party to supplement their original filing. *Id.*; *see also* January 28, 2011 Secretarial Letter in DE 10-195 and Order No. 25,213 (DE 10-195, April 18, 2011) at 101-102.
9. Much of the LRWC “rebuttal” testimony does not respond to the other parties’ testimony

but, rather, supplements – or supplants – LRWC Rate Case Filing. Consequently, as described below, the Commission should not allow certain portions of LRWC’s “rebuttal” to be included in the record of this proceeding.

#### Mason Testimony

10. The Mason Testimony states that it is rebutting “Staff’s proposed rate of return for [*sic*] equity: 9.75% for some investments and 6.0% for others,” and proposes a “minimum return on equity of twelve percent (12%).” Mason Rebuttal at p. 2 lines 3-9, page 6 lines 21-23, and p. 7 lines 1-9. However, LRWC itself originally proposed a return on equity (ROE) of 9.75%. See LRWC Rate Case Filing, Schedule 4 page 2 of 2. The Company cannot change its proposed ROE – which Staff in part agreed with – through rebuttal.
11. In addition, the subject of ROE for regulated utilities is one which requires evidence proffered by an expert on the subject. Typically, such expertise comes from witnesses with specialized education and years of experience in the field of regulated utility ratemaking. Mr. Mason is not qualified as an expert to testify as to the appropriate ROE for LRWC. He also provided no supporting analysis of this new proposal, other than to cite to Mr. Montville’s testimony, which as discussed below is similarly flawed.
12. Mr. Mason also proposes a new “Step Increase using an Alternative Regulatory Treatment,” or “START.” See Mason Rebuttal at page 7 lines 17 through page 8 line 19, and Exhibit F. This proposal does not rebut the testimony of other parties; it is a new ratemaking proposal being offered by LRWC as a supplement to its original 2010 filing, to address capital investment needs that have arisen during the pendency of this proceeding (or may arise in the near term future). Also, as with Mr. Mason’s ROE testimony, this new ratemaking proposal has not been subject to discovery, and the public

has not been notified that the Commission would be considering this new proposal under RSA 374:3-a. As a result, the testimony about the START proposal and Exhibit F are not proper rebuttal evidence and should not be considered by the Commission in its determinations in these proceedings.

13. In addition, several other exhibits attached to the Mason Rebuttal contain new direct evidence, and/or were developed to support the new direct testimony in the Rebuttal. Specifically, Exhibits A and B provide a history of the Company which, while useful, is submitted to support the Company's original filing and should not be allowed into the record at this time. Exhibit E contains a list of Capital Projects from 2012 and 2016. This list, which may be appropriate for the Company to develop in order to plan for its business needs, is not relevant to LRWC's Rate Case Filing, which is a rate case with a 2009 test year. This new evidence should also not be allowed into the record because it appears to be included to support the Company's new "START" proposal for alternative ratemaking treatment, discussed above.
14. It is too late at this point in the procedural schedule of these already-protracted proceedings to revise LRWC's rate increase proposal. If LRWC wishes the Commission and the parties to consider a new permanent rate proposal, which includes this new information, it can withdraw its original rate increase proposal and file a new case.

#### Montville Testimony

15. Mr. Montville states that one purpose of his testimony is to respond to questions raised about whether the Company has been prudently managed. See Montville Rebuttal at p. 1 line 20 through page 2 line 1. Relying on new financial analysis prepared by LRWC's accountant, Norman Roberge, (see Montville Rebuttal at p. 3 lines 15-17 and Exhibit B),

Mr. Montville opines that “the Company’s funds have not been mismanaged *in any real sense.*” Montville Rebuttal at p. 3 lines 18-19 (emphasis added).

16. In proceedings at the Commission, the subject of prudent management of a regulated utility is one which typically requires evidence proffered by an expert. Typically, such expertise comes from witnesses with specialized education and years of experience in the field of regulated utility ratemaking. Mr. Montville, while experienced in assisting private businesses, has no such utility industry experience or specialized education that would qualify him to render an opinion on the prudence of LRWC’s management. Mr. Montville merely regurgitates the results of the new (and untested) “analysis” of LRWC’s accountant, and his unqualified opinion on the issue of prudent management should not be permitted into the record of these proceedings.
17. Furthermore, Mr. Montville’s Exhibit B consists of either new or recast information that is not part of LRWC’s Rate Case Filing, and “detail” of Lakes Region financial dating from 2001-2010, which is not pertinent to that original rate increase proposal or any of the pending consolidated cases. As such, the Commission should not allow Montville’s Exhibit B into the record, either.
18. In addition to his “prudence” testimony and new financial data, Mr. Montville opines about the “sufficiency of the rates recommended by Staff.” Montville Rebuttal, beginning on p. 6 line 1. For example, Mr. Montville discusses a new financial analysis that he has prepared in Exhibit C to show the “revenues necessary” for the Company. Montville Rebuttal at p. 7 lines 3-11. Mr. Montville’s new financial analysis, however, does not rebut the parties’ testimony in the case, including Staff’s recommendation that LRWC be sold to a new owner. Rather, this new analysis is an attempt to supplement

- LRWC's Rate Case Filing and therefore must be rejected as improper rebuttal evidence.
19. Mr. Montville also provides testimony supporting Mr. Mason's "START" proposal for alternative rate regulation. Montville Rebuttal at p. 7 lines 12-17. This testimony must not be allowed entry into the record for the same reasons discussed above: this new alternative ratemaking proposal does not rebut the parties' testimony and was not noticed by the Commission or considered by the parties during discovery.
  20. In addition, Mr. Montville testifies on the Company's rate of return. Montville Rebuttal at page 7 line 18 through page 9 line 13. All of this testimony must be excluded from the record for several reasons. First, Mr. Montville is not qualified as an expert on the subject of regulated utility rate of return. He has neither the specialized education nor the experience typically required by the Commission to render an opinion on this complex issue. Mr. Montville also offers no analysis, and does not use accepted methodologies such as the Discounted Cash Formula (DCF), to support his proposal for a 12% ROE for the Company. Further, Mr. Montville's ROE testimony does not rebut the other parties' testimony or evidence that LRWC lacks the requisite financial, technical or managerial abilities to continue to maintain its franchise. Rather, his testimony is new evidence offered to supplement or supplant LRWC's Rate Case Filing. This is not appropriate rebuttal evidence and, as such, it should not be allowed into the record upon which the Commission will make its determinations in these cases.

St. Cyr Testimony

21. Similar to the Mason Testimony and the Montville Testimony, certain portions of Mr. St. Cyr's testimony, along with supporting schedules, are not offered to rebut the parties' testimony but rather consist of new direct evidence that should not be admitted as

rebuttal.

22. One section that must be excluded from the record concerns LRWC's new proposal for a 12% ROE. As the Commission is aware, Mr. St. Cyr sponsored LRWC's Rate Case Filing, which included a proposed revenue requirement calculated using a 9.75% ROE. Because the Staff agreed in part with LRWC's proposed ROE, there are no facts for the Company to dispute through rebuttal on this issue. Therefore, Mr. St. Cyr's testimony in support of a new 12% ROE is not proper rebuttal evidence and should not be allowed into the record. Consequently, the OCA requests that the Commission exclude all discussion and references to the 12% ROE contained within Mr. St. Cyr's testimony and the attached schedules and exhibits.
23. In rebuttal, Mr. St. Cyr, like other Company witnesses, also testifies about the Company's new proposal for a step increase in 2012 (the "START" proposal). As mentioned above, however, the Company withdrew its step increase proposal for the "Mt. Roberts" project in March of 2011. Since that time, the parties have proceeded with discovery and testimony on the basis that no step increase related to this project was proposed.
24. Consequently, Mr. St. Cyr's testimony about the new "START" step increase proposal does not rebut the parties' testimony. Also, Mr. St. Cyr's new step increase has not been noticed to the public, and parties have not had an adequate opportunity to investigate the proposal. Therefore, this testimony and the schedules and exhibits (or portions thereof) related to it are not appropriate rebuttal evidence for inclusion in the record. See, e.g., St. Cyr Rebuttal at page 7 line 7 through line 23, and page 8 lines 13 through 16; and Attachment SPS-1 through Attachments SPS-6 (Bates pages 25-29).
25. In sum, the Commission should not allow LRWC to supplement or revise its direct case

through rebuttal. The Commission also should not consider any new evidence submitted in rebuttal in making determinations in the rate case or other consolidated dockets. Much of LRWC's December 2011 testimony is not offered to rebut the testimony of the other parties. Rather, this "rebuttal" is primarily and practically a new rate case filing, which the Commission should preclude from the record.

26. As a result, the Commission should not allow the following pages in, or Exhibits to, the LRWC Rebuttal to be admitted into the record of these proceedings:

a. Mason Rebuttal:

- i. Page 2 lines 6-9 related to the new proposal for a 12% ROE;
- ii. Page 6 line 21 through page 7 line 9 and Mason Exhibit B related to the new proposal for a 12% ROE; and
- iii. Page 7 line 17 through page 8 line 19 and Mason Exhibit F related to the new proposal for alternative ratemaking.

b. Montville Rebuttal:

- i. Page 2 lines 9-15 related to ROE;
- ii. Page 3 line 14 through page 5 line 21 related to new financial "analysis;"
- iii. Page 7 lines 3 through 11 and Montville Exhibit C related to the new financial analysis and the new proposed step increase;
- iv. Page 7 line 18 through page 9 line 13 related to ROE and Montville Exhibit D; and
- v. All related portions of Mr. Montville's Exhibits and Schedules related to ROE, the new step increase proposal, and the new financial "analysis."

c. St. Cyr Rebuttal:

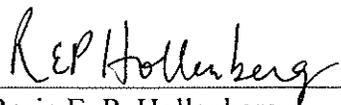
- i. Page 3 line 12 through page 4 line 6 and Schedule SPS 1b related to the new proposal for a 12% ROE;
- ii. Page 7 lines 7 through 23 related to the new proposal for a step increase;
- iii. Page 8 line 3-4 related to the 12% ROE proposal;
- iv. Page 8 lines 13 through 16 related to the new proposal for a step increase;
- v. Any and all portions of Mr. St. Cyr's Attachments and Schedules which include the proposed 12% ROE and/or the proposed step increase.

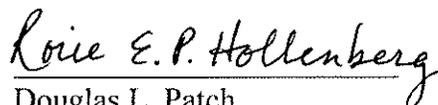
27. Advocate Staff of the Commission assents to this motion and the relief requested.

WHEREFORE, the OCA respectfully requests the Commission:

- A. Exclude the improper portions of the LRWC Rebuttal Testimony as set forth above;
- B. Or, in the alternative, give the sections described above no weight during the Commission's consideration of issues in these proceedings; and
- C. Grant such other relief as justice may require.

Respectfully submitted,

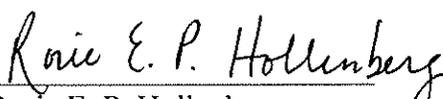
  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties in the four consolidated dockets by electronic mail.

March 2, 2012

  
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Rorie E. P. Hollenberg