

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Lakes Region Water Company, Inc.

Docket Nos. DW 10-141, DW 07-105, DW 10-043 and DW 11-021

STAFF OBJECTION TO MOTION FOR REHEARING

The Staff of the New Hampshire Public Utilities Commission (“Staff”) objects to the Lakes Region Water Company, Inc. (“Lakes Region”) motion for rehearing, styled as a “Motion for Rehearing or Clarification,” filed by Lakes Region’s counsel on August 9, 2012. (This objection is timely, in light of the Commission’s extension, by secretarial letter dated August 14, 2012, of the deadline for objections to Lakes Region’s motion for rehearing to August 20, 2012). In support of this objection, Staff states as follows:

1. In its motion, Lakes Region asserts that the Commission, in its Order No. 25,391 (issued July 13, 2012) in the above-captioned consolidated docket, failed to rule on the matter of Lakes Region’s request for an income tax adjustment in its 2009 test-year revenue requirement calculations to provide for state and federal income taxes that Lakes Region asserts will be incurred going forward. *See* Lakes Region Motion for Rehearing at pp. 1-2. Lakes Region asserts that a revenue requirement adjustment of \$68,732 was warranted for provision of such tax expense. *Id.* Staff disagrees. The Commission clearly ruled against the incorporation of Lakes Region’s request into the approved revenue requirement, making rehearing of this issue unnecessary and not in the interests of administrative efficiency, in that:

a. On Pages 12 and 13 of the Commission’s Order, the position of Staff witness Laflamme regarding Lakes Region’s request for an income tax adjustment was plainly outlined as follows:

“As part of his overall recommendation for permanent rates, Mr. Laflamme recommended that Lakes Region’s revenue requirement should not include any provision for Federal or State income taxes. This recommendation was based on the fact that as of December 31, 2009, Lakes Region had a Federal Net Operating Loss Carryforward of \$228,981 and a State Net Operating Loss Carryforward of \$269,600. Given the magnitude of these accumulated prior year losses that could be used to offset future taxable income, Mr. Laflamme did not anticipate the immediate need for Lakes Region’s revenue requirement to include a provision for income tax expense. Lakes Region proposed a total Federal and State income tax expense amount of \$49,528 in its initial filing; Mr. Laflamme proposed eliminating \$47,030 of this expense, leaving aside only \$2,498 as a component to cover Lakes Region’s New Hampshire business tax liability.”

Order No. 25,391 at 12-13.

b. The Commission, in its Order, clearly adopted the revenue requirement recommendations of Staff witness Laflamme, with the following language on Page 14 of its Order No. 25,391:

“Having reviewed Lakes Region’s original permanent rate filing, testimony filed by the parties in this case, and the overall record in this case, we believe that, with certain modifications, the rate recommendations prepared by Mr. Laflamme of Non-Advocate Staff offer the best means of providing just and reasonable rate relief to Lakes Region at this time.” Order No. 25,391 at 14.

These “rate recommendations” clearly included Staff witness Laflamme’s treatment of the income tax-related request made by Lakes Region.

c. Furthermore, the Commission clearly outlined its revenue requirement calculations on Page 15 of its Order No. 25,391, and the Order's Appendix A as follows: *"We will approve a revenue requirement for permanent rates of \$940,844. This reflects an increase in operating water revenues from general customers of \$156,447, or 19.94 percent, over pro-forma test year water revenues from general customers of \$784,397. (Appendix A attached hereto presents detailed figures regarding the revenue requirement and other terms resolved in this order)."* Order No. 25,391 at 15. These figures (including those presented in Appendix A), with some specific exceptions outlined by the Commission in its analysis, were plainly congruent with Staff witness Laflamme's revenue requirement recommendations, including those related to Lakes Region's income tax request.

2. Despite the Commission's clear adoption of Staff witness Laflamme's revenue requirement recommendations, with exceptions, and the Commission's rejection of Lakes Region's income tax adjustment request through its adoption of Mr. Laflamme's recommendations, counsel for Lakes Region has used its motion for rehearing as a vehicle for re-litigating Lakes Region's case on this point with various assertions that are untested through discovery and cross-examination. Counsel for Lakes Region also implies that Lakes Region's decision to file, or not to file, a rate case in the near future hinges on whether the Commission will grant Lakes Region's request for \$68,732 in income tax adjustment on rehearing. *See* Lakes Region Motion for Rehearing at pp. 3-4. Given Lakes Region's parlous financial condition, it is likely that a rate case will be forthcoming soon from Lakes Region with or without a Commission ruling in favor of Lakes Region on the income tax matter, giving this line of reasoning by Lakes Region's counsel a hypothetical aspect.

3. Assuming, *arguendo*, that the Commission may decide to definitively re-establish that it has ruled out the granting of Lakes Region's requested income-tax related adjustment to the revenue requirement as part of the instant rate case, Staff would like to bring the following matters of policy, precedent, and fact to the Commission's attention:

a. The tax liability for which Lakes Region seeks recovery through the instant rate case's revenue requirement is prospective for the tax year 2012. The instant rate case applies expenses incurred during the test year 2009, three years prior to the prospective tax liability for which recovery is sought. Staff views such "back-fill" recovery of 2012 expenses through a 2009 test-year revenue requirement to be inappropriate in light of long-established Commission precedent and practice, limiting recovery to those expenses incurred in the test year;

b. It would appear that Lakes Region, in an effort to bolster its position that recovery of a prospective tax liability through the revenue requirement in the instant rate case was warranted, may have imprudently amended its tax returns for prior years, so as to reduce its net operation loss carryforward. This would have generated an unnecessary tax liability for the tax year 2012 that might not otherwise be incurred by Lakes Region. This Objection is not the appropriate vehicle for complete examination of this point, but Staff wishes to register its disapproval of Lakes Region wasting its scarce time and resources to engage in an attempt to enhance the case for its recovery of income-tax related expenses outside of the 2009 test year through its amended tax filings for past years;

c. Staff notes that Lakes Region's methodology for amending its prior-year Annual Report is likely not in compliance with the Uniform Standards of Accounting for Water Utilities (*e.g.* General Instructions 610.01(d)(5));

d. Lakes Region has not provided Staff with its amended tax returns for tax years 2007, 2008, and 2009 to enable Staff to independently verify Lakes Region's assertions, as would be appropriate pursuant to RSA 374:4 and Staff's general supervisory powers.

4. In summation, Staff opposes Lakes Region's motion for rehearing as unnecessary and not in the interests of administrative efficiency, in light of the Commission having ruled on this matter. Staff also does not expect Lakes Region's request for the income tax-related adjustment to succeed on the merits before the Commission if rehearing were granted, for the reasons discussed above. Therefore, Staff would invite Lakes Region to withdraw its motion for rehearing on its own initiative, and focus its strained managerial and financial resources towards the goal of complying with the terms and recommendations of Order No. 25,391, in an effort to stabilize its business condition on a comprehensive, rather than piecemeal, basis.

WHEREFORE, Staff respectfully states and requests:

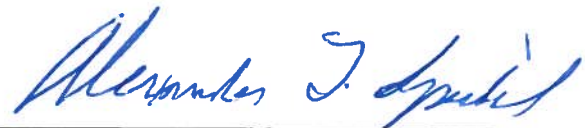
- A. the Commission deny Lakes Region's motion for rehearing;
- B. that the Commission grant such other and further relief as justice may require.

Respectfully submitted,

Staff of the N.H. Public Utilities Commission

Date: August 16, 2012

By: _____



Alexander F. Speidel
Staff Attorney