

BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

*Lakes Region Water Co., Inc.
Dockham Shores Estates Water Co., Inc.*



Petition to Transfer Utility Assets and Franchise and for Related Approvals

Docket No. DW 16 – ____

NOW COME Lakes Region Water Co., Inc. ("Lakes Region"), by and through Upton & Hatfield, LLP, and Dockham Shores Estates Water Co., Inc., ("Dockham Shores"), by and through Patrick Wood Law Office, PLLC, and petition the Commission for approval to: (1) transfer Dockham Shores's water utility assets and franchise to Lakes Region pursuant to RSA 374:22 & 30 as set forth in the Asset Purchase Agreement, submitted herewith; (2) discontinue Dockham Shores' operation as a public water utility following the transfer pursuant RSA 374:28; (3) authorize Lakes Region to borrow an amount not to exceed \$135,000 to acquire and construct improvements to the Dockham Shores water system pursuant to RSA 369:1 & 2; (4) authorize a step adjustment for Dockham Shores of up to \$6,620 to recover the actual costs of construction of the improvements; and (5) authorize Lakes Region to make minor modifications to Dockham Shores's existing tariff pursuant to RSA 378:3. In support thereof, Lakes Region and Dockham Shores state as follows:

I. PARTIES

Lakes Region is a New Hampshire corporation authorized to operate as a public water utility in the State of New Hampshire. Lakes Region currently serves a total of 1,672 customers in 17 separate systems located in the Lakes Region and White Mountain region of New Hampshire.

Dockham Shores is a New Hampshire corporation and a regulated public water utility that provides water service to 60 customers in the Town of Gilford, New Hampshire. Dockham Shores is owned by Colin and Mary Robertson who are its sole shareholders.

II. TRANSFER OF UTILITY ASSETS AND FRANCHISE

RSA 374:22 requires approval by the Commission to engage in the business of a public utility as follows:

374:22 Other Public Utilities. –

I. No person or business entity ... shall commence business as a public utility within this state, or shall engage in such business, ... or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.

RSA 374:30 requires approval for the transfer of the franchise, works, or system of an existing public utility as follows:

374:30 Other Public Utility Leases, Etc. –

I. Any public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state, ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise

The Supreme Court has interpreted these provisions to require that “all sales or transfers of regulated public utility property must be approved by the PUC after a finding that the sales are for the public good.” *Appeal of Verizon New Eng., Inc.*, 153 N.H. 50, 62 (2005) citing *Appeal of Public Serv. Co. of N.H.*, 124 N.H. 479, 483 (1984). In making this determination, the Commission “consider[s] all the interests involved and all the circumstances in determining what is reasonable.” *Pennichuck Water Works, Order No. 25,292* (November 23, 2011) citing *Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929); *Appeal of Pinetree Power*, 152 N.H. 92, 97 (2005). The

Commission also “has a longstanding practice of evaluating the managerial, financial, and technical ability of the proposed transferee to operate a public utility.” *Eastman Sewer Company, Order No. 25,634* (March 11, 2014).

Lakes Region and Dockham Shores request that the Commission approve the transfer of Dockham Shores assets and franchise to Lakes Region as set forth in the Asset Purchase Agreement dated April 29, 2016. *Exhibit A*. The transfer of the Dockham Shores water system and franchise to Lakes Region is in the public good because it will benefit customers of both Dockham Shores and Lakes Region. These benefits include the following:

- Lakes Region has significant expertise operating small water systems in New Hampshire that are similar to the Dockham Shores water system. Lakes Region employs a staff of 8 professionals who specialize in different aspects of operation of small community water systems. Lakes Region’s office staff includes: a Utility Manager; an Office Manager; and 2 administrative assistants. Three of Lakes Region’s four office staff are certified with a 1A Water Operators Certificate. In addition, Lakes Region’s field staff includes: a Field Supervisor with a Level 2 Distribution and a Level 2 Treatment certification;¹ one Water Operator with a Level 2 Distribution certification; and one Water Operator with a 1A Water Operator certification.
- Lakes Region’s professional certified water operators and other staff are available to support normal operations for all of its systems. In addition, Lakes Region has technical staff available on a 24/7 basis in the event of an emergency. Under current ownership, Dockham Shores has only one (1) certified operator and no additional employees or professional staff in the event of an emergency.

¹ Lakes Region’s Field Supervisor is Justin Benes who prepared *Exhibit B*.

- Lakes Region will construct significant improvements to the Dockham Shores water system. As explained in the Lakes Region's *Proposed Capital Improvements, Exhibit B*, the system has an "EXTREME" need for improvements to improve performance, reliability and safety. The existing pump house makes operations "not only difficult but dangerous for any operator." Lakes Region proposes to construct capital improvements that will result in "quicker response to problems, less down time to customers" and provide its operators with "a better view of the system parameters." *Exhibit B*.
- Lakes Region will also correct a "significant deficiency" in the atmospheric storage tank for Dockham Shores identified by the Department of Environmental Services ("DES") in its most recent sanitary survey. *Exhibit C*. As noted by DES, a "significant deficiency" is one that "can directly and adversely affect a public water system's water quality or that can reduce the water system's reliability and ability to deliver safe drinking water to its customers..."
- Lakes Region expects to improve administration and provide greater economies of scale by serving Dockham Shores with Lakes Region's professional staff. The addition of 60 Dockham Shores customers to Lakes Region will provide a larger customer base and thereby lessen future costs per customer.
- Lakes Region proposes to finance the acquisition and improvements to the Dockham Shores water system using 100% debt financing. This will also improve the capital structure of both Dockham Shores (currently 100% equity) and Lakes Region. Low-cost financing with CoBank ACB will allow Lakes Region to lessen the need for future rate increases.

As a result of the foregoing, Lakes Region and Dockham Shores submit that, consistent with the provisions of RSA 374:22 & 30: (1) transfer of the Dockham Shores water system and franchise to Lakes Region as set forth in the attached Asset Purchase Agreement is in the public good; and (2) Lakes Region has the managerial, financial, and technical ability to operate the Dockham Shores public water utility.

III. PETITION TO DISCONTINUE OPERATION AS A PUBLIC UTILITY

RSA 374:28 allows Dockham Shores to discontinue operations as a public utility “whenever it shall appear that the public good does not require the further continuance of such service.” The Asset Purchase Agreement provides for Dockham Shores to transfer all of its utility assets and franchise to Lakes Region. Once transfer has been completed, there is no reason to “require the further continuance of [Dockham Shores’s] service” as a public utility. *See e.g. Eastman Sewer, Order No. 25,634, Pages 19 to 21.* As a result, Lakes Region and Dockham Shores petition the Commission to authorize Dockham Shores to discontinue operation as a public utility following the transfer of its assets and franchise as provided by the Asset Purchase Agreement.

IV. FINANCING APPROVAL

A. Legal Standard.

RSA 369:1 provides for Commission approval for the issuance of long-term debt upon a finding that the proposed financing is “consistent with the public good” as follows:

369:1 Authority to Issue Securities. – A public utility lawfully engaged in business in this state may, with the approval of the commission but not otherwise, issue and sell its stock, bonds, notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes. The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such

reasonable terms and conditions as the commission may find to be necessary in the public interest; provided, however, that the provisions of RSA 293-A shall be observed by corporations organized under the laws of this state in respect of the corporate authorization required and of other formalities to be observed.

In addition, RSA 369:2 requires Commission approval for the issuance of a security interest in utility property as follows:

369:2 Mortgages. – A public utility may, with the approval of the commission but not otherwise, mortgage its present and future property, tangible and intangible including franchises, to secure the payment of its bonds or notes, including any bonds or notes to be thereafter issued under the provisions of such mortgage; provided, however, that no such approval shall be required for any mortgage of property pursuant to after-acquired clauses of mortgages securing the payment of bonds or notes issued prior to September 1, 1951.

B. Financing for Acquisition and Improvement of Dockham Shores.

Lakes Region proposes to issue up to \$135,000 of long-term debt to acquire Dockham Shores's utility assets and franchise and to construct significant improvements to the system that will directly benefit customers of the system as noted above and in *Exhibits B & C*. Lakes Region has prepared schedules showing the financing for the acquisition of Dockham Shores for the purchase price of \$60,000, plus a conservative estimate of \$60,000 for the costs of the necessary improvements to the system. *See Exhibit D*.

The schedules in *Exhibit D* include: (a) *pro forma* adjustments showing the effect of the financing for the acquisition and improvements to the Dockham Shores water system on Lakes Region's 2015 balance sheet and income statement; and (b) a *pro forma* step adjustment for the cost of improvements to the system that has an "EXTREME" need for improvements to maintain service that is reasonably safe and adequate. *Exhibits B & C*.

Lakes Region has not included testimony with the Petition. However, Lakes Region will provide any additional information, including testimony, as may be necessary following a

technical session in consultation with Staff and other interested parties in this proceeding.

Lakes Region's breakdown of the costs to acquire and improve the Dockham Shores system is contained in *Exhibit E*. Both the financing for Dockham Shores in *Exhibit D* and the other capital improvements identified in *Exhibit E* are part of a larger financing being considered in Lakes Region's pending rate case, Docket No. 15 – 209, in order to improve the ratio of debt-to-equity in Lakes Region capital structure and thereby lessen rates using low cost debt financing. In this proceeding, Lakes Region requests approval of the financing for the acquisition and improvements of Dockham Shores. Lakes Region anticipates that the remainder of the projects in *Exhibit E* may or may not result in a separate request for financing based on comments from Staff and other interested parties in DW 15 – 209.

C. Terms.

Lakes Region has obtained a term sheet from CoBank ACB which presents favorable interest rates and terms. *Exhibit F*. Lakes Region proposes to borrow up to \$135,000 using CoBank's Fixed Rate Option with an interest rate for a 20 year fully amortizing loan as of 4-29-16 of 5.27%. The terms of the proposed CoBank financing are highly favorable. Significantly, Dockham Shores' existing rates are based on its authorized rate of return on equity of 9.60% "because Dockham Shores does not have debt in its capital structure." Order No. 25,582 (October 14, 2013). Use of the CoBank financing will enable Lakes Region to improve service to customers at a cost that is substantially below the costs under the existing capital structure for Dockham Shores.

Because the actual interests rates will be determined at the time of closing, Lakes Region requests that the Commission authorize Lakes Region to borrow up to \$135,000 at interest rates not to exceed 6.00% for a 20-year fixed rate.

D. Security Interest in Lakes Region's Utility Plant.

Lakes Region notes that Commission approval is required to the extent that utility property is used "to secure the payment of its bonds or notes". RSA 369:2. Lakes Region's existing approved mortgage with CoBank ACB provides for a security interest in all "after acquired" property such as the Dockham Shores water system. Lakes Region requests that the Commission authorize Lakes Region to secure its proposed financing with CoBank, pursuant to RSA 369:2.

E. Conclusion.

For the reasons noted in Section II, above, approval of Lakes Region's proposed financing to acquire and improve the Dockham Shores system will benefit existing customers of Lakes Region and existing customers of Dockham Shores. As a result, Lakes Region's petition is consistent with the public good and the requirements of RSA 369:1 & 2.

V. STEP INCREASE FOR DOCKHAM SHORES IMPROVEMENTS.

Lakes Region estimates the cost of improvements to the Dockham Shores system to be \$60,000. Because of the urgent need for a substantial investment to maintain service, a step adjustment is needed. Lakes Region agrees that ordinarily consideration of test year data, revenues and expenses in a rate case would be appropriate. However, the need for improvements to the system to maintain service that is reasonably safe and adequate is "EXTREME". *Exhibits B & C.* Delaying the necessary improvements risks failure of system components that need to be replaced immediately. The need for both improvements and a mechanism for cost recovery is urgent.

As a result, Lakes Region proposes that the Commission provide notice and approve a step increase in customer revenues for Dockham Shores not to exceed \$6,620 as shown in

Exhibit D, Schedules SPS-2 & 5. This will allow Lakes Region to proceed with construction of the critical improvements as soon as financing is approved and enable customers to benefit from the improvements and eliminate risks, including those identified in *Exhibits B & C*, as soon as reasonably possible.

VI. TARIFF MODIFICATIONS.

Lakes Region requests that the Commission authorize Lakes Region to modify Dockham Shores's existing tariff to reflect Lakes Region as the owner of the Dockham Shores water system and to reflect Lakes Region's existing, approved terms and conditions, pursuant to RSA 378:3. This will enable Lakes Region to operate all of its water systems using consistent terms and conditions.

WHEREFORE Lakes Region Water Co., Inc., and Dockham Shores Estates Water Co., Inc., respectfully request that the Commission:

- (1) Approve the transfer of Dockham Shores's water utility assets and franchise to Lakes Region as set forth in the Asset Purchase Agreement pursuant to RSA 374:22 & 30;
- (2) Authorize Dockham Shores to discontinue operation as a public water utility following the transfer pursuant RSA 374:28;
- (3) Authorize Lakes Region to borrow an amount not to exceed \$135,000, as set forth herein, pursuant to RSA 369:1 & 2;
- (4) Authorize Lakes Region to increase revenues approximately \$6,620, as set forth herein and in *Exhibit D, SPS-5*;
- (5) Authorize Lakes Region to modify Dockham Shores's existing tariff as set forth herein; and

(6) Grant such other relief as justice may require.

Respectfully submitted,

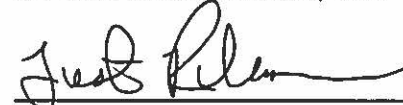
Lakes Region Water Company

By Its Counsel,

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Date: May 31, 2016

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Date: May 31, 2016

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