

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

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

Lakes Region Water Company, Inc.

OBJECTION TO MOTION IN LIMINE

NOW COMES the Lakes Region Water Company and objects to the Office of Consumer Advocate's (OCA) and the Property Owners Association of Suissevale, Inc.'s (Suissevale) *Motion in Limine* as follows:

1. The OCA and Suissevale argue that "most" of the Company's December 12, 2011 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". *Motion in Limine*, Para. 7. This is simply not true.

2. **The Company has not presented "a new rate increase proposal"**. The Company's initial rate case filing requested to "increase its annual revenues from general customers by \$312,059 or 40.74%." *Initial Filing*, Page 1 (LRW Exhibit 3). Staff's October 14, 2011, testimony recommends significant reductions to an "increase of \$145,120, or 18.50%, over LRWC's pro-formed test year operating water revenues from general customers of \$784,397." *Testimony of Jayson Laflamme*, Page 3.

3. The Company's Rebuttal Testimony stipulates to the schedules proposed by Staff witness Jayson Laflamme in all but four areas. Those areas are:

- (1) Use of Year End Rate Base;¹
- (2) Use of 12% Return on Equity;²
- (3) Adjustment to Retained Earnings to Reflect the Reduction for Pension and Health Insurance;³ and
- (4) Adjustment for Federal Income Tax and State Business Tax.⁴

By responding to Staff's schedules, the Company has narrowed the rate case to four discrete issues, that would result in an increase of 30.21%. *Testimony of Stephen P. St. Cyr, Page 9 (LRW Exhibit 5)*. The Company's Testimony is squarely within its initial request for a 40.74% increase.

4. It is true that one parameter, the rate of Return on Equity (ROE) (12%), is now higher than it was in the Company's initial filing (9.75%). However, this adjustment is made in response to the significant reductions proposed by Staff, which included a reduction to the Company's proposed ROE. As stated by Robert Montville, his testimony:

[Responds to] Staff's proposed rate of return and, specifically a return of equity of 9.75% for certain investments and 6.0% for others. It is my opinion that this rate of return is inadequate in light of the high level of risk associated [with] Lakes Region Water Company's business providing service to the public. I believe that a rate of return on equity of at least 12% is required due to the inherent risk associated with operation of the

¹ Testimony of Stephen P. St. Cyr, Page 2 (LRW Exhibit 5).

² Testimony of Stephen P. St. Cyr, Page 3 (LRW Exhibit 5).

³ Testimony of Stephen P. St. Cyr, Page 4 (LRW Exhibit 5).

⁴ Testimony of Stephen P. St. Cyr, Page 4 (LRW Exhibit 5).

Company's business providing service to the public and the need for substantial non-revenue generating capital improvements.

Testimony of Robert Montville, Page 2 (LRW Exhibit 7).

5. The purpose of a rate proceeding is not merely to reduce the parameters requested by the Company, but rather to arrive at rates "sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation". RSA 374:27 & 28. During the course of its investigation, the Commission may reduce or increase a Company's proposed ROE as long as the final approved increase remains within the notice provided to customers. *See, e.g.* RSA 378:1-5.

6. The basis for the Company's proposed adjustment to its ROE is the Company's limited access and the nature of the systems it operates. The Company has not introduced a new methodology or evidence not previously before the Commission. The Company has simply proposed an appropriate adjustment to its ROE to recognize risks inherent in the utility plant it uses to provide service to the public.

7. **The Company's Testimony Concerning Its Operations Is Proper Rebuttal.** The Company's testimony showing it has resolved all but one of its outstanding Letters of Deficiency (LODs)⁵ is appropriate in response to OCA and Staff's Testimony that the Company should be placed into receivership or sold. The Company's testimony demonstrates that sale or receivership is not allowed under the statute as RSA 374:47-a requires a "serious and imminent threat to the health and welfare of the customers of the utility".

⁵ As presented at the hearings, the only outstanding LOD relates to supply capacity and the Company is resolving this LOD under a schedule approved by the NHDES.

8. The Company does not bear the burden of proof in DW07-105. None-the-less, the Company's Testimony shows the significant improvements it has made to its water systems since the 2007 investigation and that its service does not present any threat to public health or welfare.⁶

9. Similarly, the Company's testimony concerning its 5-year capital improvements plan rebuts Staff's suggestion that it "has never engaged in a comprehensive planning process by which it acquires capital, deploys it, and timely obtains rate relief." *Testimony of Mark Naylor*, Page 4, Lines 20-21. As explained by Tom Mason's Testimony, the Company has a capital improvements plan and it "re-evaluates [its] plans on an on-going basis as circumstances change or new needs arise. The problem is not a lack of planning. The Company's rates are simply too low to allow it implement the necessary improvements." *Testimony*, Page 5 & Mason Exhibit E (LRW Exhibit 6).

10. **The Company's START Proposal.** The Company's START proposal arises directly out of its limited access to capital and was presented as a mechanism to "allow it to reassure its lenders of its ability to repay loans for capital projects in order to obtain long term financing at lower rates." *Testimony of Tom Mason*, Page 7 (LRW Exhibit 6). This Testimony presents one approach to allow the Company to "acquire[]

⁶ The Company does not believe that any testimony concerning involuntary sale or receivership is appropriate in these proceedings because, on July 25, 2008, the Commission approved a Settlement Agreement that provided that "this proceeding should become a monitoring docket for a limited period of time into the future, pending the completion of two other processes: a filing by Lakes Region for financing approval and rates, and the Attorney General's investigation into the issues surrounding the re-connection of a well at the Tamworth system." Settlement Agreement, Pages 1-2 (LRW Exhibit 12); Order No. 24,877, Page 4 (LRW Exhibit 13) (Approving Settlement Agreement for proceeding to "remain open for a limited period to monitor Lakes Region's compliance with the commitments described below."). The Company has complied with the Settlement Agreement in all material respects. There is simply no legal authority or factual basis to order an involuntary receivership or sale of the Company.

capital, deploy[] it, and timely obtain[] rate relief” in light of Staff’s Testimony.

Testimony of Mark Naylor, Page 4, Lines 20-21.

11. The OCA and Suissevale misunderstand one aspect of the Company’s START proposal. The Company’s START proposal contemplated that it would request approval for this approach in a future proceeding, as follows:

3. The Company requests START rate treatment at the time it seeks approval for financing from the Commission under RSA 369. START rate treatment allowed [only]⁷ if the Commission approves the treatment as just and reasonable under RSA 374:3a. Staff, OCA or interested parties may advocate for traditional or other rate treatment.

Mason Exhibit F, Page 35 (LRW Exhibit 6) (emphasis added). The Company intends to seek that the Commission approve its START treatment in a future proceeding and describes it here as it relates directly to the concerns expressed by Staff as to how it could access debt and capital in the future.⁸

12. **The Company’s Expert Testimony Should Not Be Excluded.** The Company objects to the suggestion that its expert, Robert Montville is not qualified. As the OCA recognized, he is “a financial expert with many years of experience assisting business with "turn around" planning and execution to address problems similar to those facing LRWC.” *Testimony of Stephen Eckberg*, Page 18, Lines 16-18. It is difficult to reconcile the OCA’s position that he should not be allowed to offer testimony on the

⁷ The word “on” should be corrected to read “only”.

⁸ The Company’s START proposal is not the only approach it will consider. The Company will continue to evaluate other proposals, including SRF financing with a structure that allows it to match loan repayment to the earnings provided by its rates approved by the Commission.

revenue required to complete the very “plan to return the Company to strong financial health” that OCA recommends in its testimony. *Id.*, Page 19, Line 1.

13. As a legal matter, the rules of evidence do not apply to Commission proceedings. The weight the Commission affords this testimony rests within its discretion. However, there is no basis to legal basis to simply preclude the Commission from considering adjustments to its ROE and doing so would deny the Company rates sufficient to provide not less than a reasonable return in light of the risks inherent in its business as required by RSA 378:27 & 28.

WHEREFORE the Lakes Region Water Company respectfully requests that the Motion in Limine be denied.

Respectfully submitted,

**LAKES REGION WATER
COMPANY, INC.**

By its Counsel,

UPTON & HATFIELD, LLP

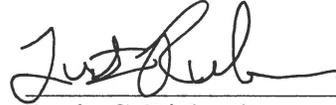


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service lists for DW 10-141, DW 07-105, DW 10-043, and DW 11-021.



Justin C. Richardson