

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Lakes Region Water Company, Inc.

Docket No. DW 13-___

PETITION FOR EMERGENCY RATES

NOW COMES the Lakes Region Water Company, by and through Upton & Hatfield, LLP, and petitions for emergency rates pursuant to RSA 378:9 as follows:

1. RSA 378:9 provides that “[w]henver the commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto.” Lakes Region Water Company requests that the Commission alter its rates on an emergency basis to allow recovery of \$100,219 in estimated Federal and State income taxes incurred in 2012, and that it expects to incur going forward. As explained in the Testimony provided herewith, the absence of revenue for Federal and State income taxes in its currently approved rates jeopardizes the Company’s financial condition and its ability to provide service to the public.

2. In its most recent rate case, Lakes Region Water Company sought revenue to pay Federal and State income taxes the Company anticipated it would incur in 2012. On July 13, 2012, the Commission issued Order No. 25,391 which approved permanent rates that did not include revenue to pay Federal and State income taxes. On August 8, 2012, the Company sought rehearing and requested that its “rates be adjusted to include the required tax expense to an effective date of January 1, 2012 as it has incurred tax liability as of that date.” Page 9.

3. The Commission denied rehearing on September 6, 2012 in Order No. 25,408, stating that: “we rule in accordance with past ratemaking practice, that this future tax liability, if supported by the evidence, should be recovered as part of a Commission-approved revenue requirement for a more current test year as part of a future rate case filing by Lakes Region.”

4. The Company is closing its books for 2012 and expects to file its tax return and annual report in due course. It anticipates filing a rate case in 2013 based on a 2012 test year for an estimated \$229,129 in plant additions completed in 2011 and 2012, and for the Mt. Roberts project that serves its Paradise Shores customers in Moultonborough, New Hampshire.

5. The Company has incurred Federal and State income tax liability in 2012 and the Company requires rate relief on an emergency basis. As explained in the Testimony of Stephen St. Cyr, in 2012 the Company incurred Federal and State income tax liability in 2012 of \$100,219 and, because the revenue required to pay taxes is itself taxable, the Company requires \$173,634 to pay its tax liability, which does not include interest on estimated taxes due in 2012.

6. As explained in the Testimony of Thomas A. Mason and in the Testimony of John Dawson, the Company’s approved rates are insufficient to make estimated tax payments because they provide for no income tax expense and the Company had to pay for operating costs and make investments in plant that were critical to provide service to the public. If the Company does not receive revenue in rates to pay taxes incurred in 2012, and those incurred going forward, its financial condition will deteriorate and its ability to continue to provide service to the public will be impaired.

7. The Company therefore requests that the Commission adjust its rates on an emergency basis as set forth in the Testimony of Stephen P. St. Cyr in order to allow the Company to pay Federal and State income taxes incurred in 2012, plus interest, and on a going forward basis subject to reconciliation in its next permanent rate case.

8. Approval of emergency rates requested herein is consistent with cases decided under RSA 378:9. For example, in the *Petition of PSNH*, 130 N.H. 265, 270 (1988), the Supreme Court upheld the finding of an emergency where it was “unlikely that PSNH would be in a position to meet its cash obligations as they became due: namely, interest and principal payments on debts, expansion of service to customers, and fuel expenses, payroll, and other related expenses” and investors in the market were “unwilling to provide additional new funds for PSNH due to investor perceptions of high risk”. The Company faces this very situation if it does not receive revenue to pay its Federal and State income tax liability.

9. In a 1951 case, the Supreme Court observed that even temporary rates were “obviously a time consuming procedure” and that “the urgency of this petitioner's needs and not the time nor manner of their arrival is decisive” as to whether an emergency exists under RSA 378:9. *Petition of PSNH*, 97 NH 549, 551 (1951). The Court stated that: “the test to determine whether the emergency statute may apply here is to inquire whether reasonable persons may find the affairs of this company are at such a crisis that immediate and substantial disaster threatens unless prompt relief is given.” *Id.* It found an emergency existed because, absent an immediate increase in rates, “there will be no funds to complete construction now under way or to begin new construction” and

that “[p]ayment of present bank loans will be impossible and their renewal will be difficult.” *Id.* Again, this is the situation facing Lakes Region Water Company.

10. Finally, in *New England Telephone & Telegraph Company v. State*, 95 N.H. 58, 62 (1948), the Supreme Court stated that “[t]he minimum of emergency relief to which the company is entitled is a sum which will put a stop to the continuing operating losses of the company and pay accruing interest upon the company's bonds allocated to its New Hampshire property”. This requires that the Commission approve emergency rates sufficient to pay the Company’s going-forward tax relief, plus interest on its outstanding 2012 tax liability, in order to “stop the continuing operating losses of the company”.

11. Based on the foregoing, the Company requests that the Commission authorize emergency rates as set forth in the Testimony of Stephen P. St. Cyr, subject to reconciliation of its actual tax liability as determined by the Commission in its next permanent rate case.

WHEREFORE the Lakes Region Water Company respectfully requests that the Commission:

- A. Approve this Petition for Emergency Rates;
- B. Authorize Emergency Rates as set forth in the Testimony and Schedules of Stephen P. St. Cyr, subject to reconciliation in the Company’s next permanent rate case; and
- C. Grant such other relief as justice may require.

Respectfully submitted,

**LAKES REGION WATER
COMPANY, INC.**

By its Counsel,

UPTON & HATFIELD, LLP

A handwritten signature in black ink, appearing to read "Justin Richardson", written over a horizontal line.

Justin C. Richardson

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Dated: February 1, 2013