

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Lakes Region Water Company, Inc.

Docket No. DW 16-834

*Motion for Rehearing and Suspension of Order No. 26,014*

NOW COMES Lakes Region Water Co., Inc., (the "Company" or "Lakes Region") moves for rehearing of Order No. 26,014 as follows:

**I. REHEARING REQUEST**

Lakes Region Water Co., Inc., agrees that its Tariff does not define when a customer who develops his property to allow two separate uses, a residential use and a vacation rental, becomes two customers. The Commission's directive to revise its Tariff to address this issue is a good one. However, in Order No. 26,014, the Commission did not address the central issue in this case: that Lakes Region's Tariff governs water utility service that it is "rendered in accordance with the rules adopted by the commission" (RSA 378:1) and the Commission's rules specifically prohibit both branched and tandem services. Puc 606.04 (h) & (j).<sup>1</sup> As a result, Lakes Region requests that the Commission grant rehearing or reconsideration of Order No. 26,014 pursuant to RSA 541 and suspend Order No. 26,014 pursuant to RSA 365:21, due to the following errors of law:

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<sup>1</sup> See e.g., Lakes Region's November 30, 2016 *Witness Summary and Exhibit List*, Page 2; Lakes Region's December 5, 2016 *Motion to Dismiss*, Para. 5 ("The Commission's Laws, Rules and Tariff Control. The Commission has adopted specific rules which control the outcome of this proceeding: For example, Puc 606.04 (h) requires that all water utilities "shall require that the customer shall not install any tree or branch connection in the service pipe." Puc 606.04 (j) requires that all water utilities "shall require" that "[n]o tandem services shall be permitted."").

**1. The Commission Misapprehended the Customer's Burden of Proof.**

Order No. 26,014 mistakenly determined that the customer's burden of proof was to prove that "Lakes Region's decision to impose a second customer charge on him is not authorized under its current tariff".<sup>2</sup> However, the customer's burden of proof was to demonstrate that the rate charged by Lakes Region was "unjust and unreasonable" or otherwise in violation of the law. *See e.g. RSA 378:7; RSA 365:29.*

RSA 378:1 provides that all utility service is to be "rendered in accordance with the rules adopted by the commission pursuant to RSA 541-A". The Commission's rules governing water service specifically prohibit tandem services. *See e.g. Puc 606.04 (j)* ("[n]o tandem services shall be permitted."). Order No. 26,014 misapprehended the law and the customer's burden proof to be merely to show that Lakes Region had no specific tariff provision authorizing it to charge for a second service. However, water utility service under RSA 378:1 means water service that is "rendered in accordance with the rules adopted by the commission" and the commission's Rule Puc 606.04 (j) clearly prohibits tandem services.

Order No. 26,014 appears to require that Lakes Region's Tariff define each or every circumstance in which a separate customer charge may be required. Lakes Region's Tariff is not intended to do this. In fact, the Tariff does not even state that separate apartments on the same property but owned by a single owner, such as exist in Tamworth and other locations, are required to pay separate customer charges. This is because Lakes Region's Tariff *assumes* and the Commission's rules *require* that separate and distinct uses or buildings have separate service lines (and meters) "except in unusual situations such as service to an apartment or to a condominium". Rule Puc 606.04 (g).

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<sup>2</sup> Order No. 26,014, Page 9.

However, the law does not require Lakes Region to define each and every circumstance when a separate service may be required. Rather, it is the customer's burden to demonstrate that Lakes Region's rates or charges are unjust or unreasonable, or otherwise in violation of the law. The fact that Lakes Region's Tariff may have been unclear does not mean that a customer is entitled to a second service free of charge while others pay full price. Rather, the law requires that the customer prove that Lakes Region applied its rates in a manner that is unjust or unreasonable or in violation of the law.

In this case, the customer submitted no evidence to show that Lakes Region's charges were in fact unjust or unreasonable or otherwise in violation of the law. He merely sought to prove that Lakes Region's Tariff did not specifically address his particular use and, in his view, he was therefore entitled to pay only a single charge. However, as Order No. 26,014 recognizes, he has two separate uses: a residential use and seasonal vacation rental. There are two separate structures that are connected by a tandem service connection, which is prohibited by Rule Puc 606.04 (j). As staff testified and Order No. 26,014 recognizes, the second use as a vacation rental increases the demand on Lakes Region's system and the cost to provide water service. RSA 378:1 directs Lakes Region to provide service "in accordance with the rules adopted by the commission" which prohibit tandem services. Lakes Region is therefore required to charge each separate apartment or use as a separate customer.

While the customer demonstrated that Lakes Region's Tariff did not specifically address tandem services, he did not meet his burden to prove that Lakes Region charged rates that are unjust or unreasonable or in violation of the law. It was not Lakes Region's burden to prove or establish absolute or mathematical certainty in the definitions its

Tariff when the Commission's rules specifically prohibit tandem services. As a result, Lakes Region requests that the Commission reconsider or rehear Order No. 26,014 in light of the customer's burden to prove that the rates charged by Lakes Region to this customer are unjust or unreasonable or otherwise unlawful.

**2. The Commission Erred By Ordering Reparation without Notice.**

Lakes Region moves for rehearing or reconsideration of Order No. 26,014 because the Commission ordered reparation of customer bills paid for service that had been already rendered when RSA 365:29 requires issuance of a "notice of hearing or the filing of the petition for reparation." In this case, the customer did not request (and the Commission did not notice) any reparation at any time prior to the hearing.

The record in this case is not in dispute. The customer filed a complaint after Staff agreed that Lakes Region had correctly applied a second base charge for the customer's two separate uses of his property as both a residence and vacation rental. In his complaint dated October 3, 2016, he did not request a refund but instead requested: "A RESOLUTE FINDING TO END THE CONTINUOUS THREATS OF WATER SHUTOFF FOR NONPAYMENT FROM LAKES REGION WATER." (emphasis in original). Lakes Region did not threaten the customer. However, the key point is that he did not request and Lakes Region had no reason to believe that the customer requested a refund.

On November 10, 2016, the Commission directed Lakes Region and the customer to submit statements of the law and relief requested. In his December 16, 2016 response, the customer did not cite the reparation statute or request a refund. Instead, he cited extensively to the ADU law which *as of June 1, 2017*, prohibits municipal officials

from requiring separate utility systems for ADUs. However, the customer does not have an ADU and Lakes Region reasonably understood this proceeding to concern only whether its decision to charge a second base charge, supported by staff, was unjust or unreasonable.

At no time did the Commission notice the potential for a refund to be ordered. The customer did not request a refund until the conclusion his closing statement. *Transcript*, Page 206 or 209. This occurred after the issues and evidence were presented and after Lakes Region's opportunity to present arguments.

Had the customer requested (or the Commission issued notice of) a refund, Lakes Region would have immediately filed a revised Tariff to require that a second base charge be paid. In fact, Lakes Region had already begun to consider updating the terms and conditions contained in its Tariff prior to this proceeding. However, because of the complaint filed by this customer (and in light of the fact that he did not request a refund), Lakes Region determined that the best course of action would be to wait for the Commission's determinations and interpretation of its rules in this proceeding before filing updates to its Tariff.

New Hampshire law and RSA 365:29 are clear that a "notice of hearing or the filing of the petition for reparation" are required before a refund can be ordered. In this case, the customer did not file a petition for reparation or similar request. Had notice of a refund been issued by the Commission, Lakes Region would have promptly amended its Tariff to include a requirement that each separate apartment, building or other use pay a separate customer charge. In addition, Lakes Region would have presented detailed evidence as to its actual costs to provide service this customer's actual consumption

during peak demand periods in order to demonstrate that the rates charged for service to his premises were not unjust or unreasonable. However, in this case there was no customer request for a refund and the Commission did not issue notice of one. As a result, it was unnecessary to delve into the facts or the law concerning whether this customer is entitled to a refund as the legal prerequisites for a refund under RSA 365:29 had not been met. As a result, Lakes Region requests that the Commission suspend and grant rehearing or reconsideration of Order No. 26,014 to the extent it directs Lakes Region to refund customer charges for service rendered, contrary to RSA 365:29.

**3. The Commission erred by ordering that Lakes Region could not revise its Tariff to require a separate meter or a service line.**

On the last page of Order No. 26,014, the Commission determined that Lakes Region could amend its Tariff in the future to require a second customer charge. The Order states that: “Until such time as Lakes Region’s tariff is amended, the Company shall not impose a second base charge on Mr. Mykytiuk”. Page 9. However, in the last sentence, the Commission ordered that: “In the event its tariff is revised, the Company shall not require Mr. Mykytiuk to install a second meter in the future so long as he undertakes no further renovations to the structures on his property.” *Id.*

Lakes Region does not believe it is appropriate to make any determinations as to how a future tariff might be applied at this time in this proceeding. The practical operational issues (below) have not been presented and the Commission’s rules clearly prohibit tandem services. To the extent that the Commission is concerned as to how Lakes Region may apply a future tariff, the Commission could leave this docket open or open a new docket.

In making its ruling, Order No. 26,014 overlooks significant operational and regulatory reasons for the Commission rules and DES requirements that each separate customer or use have its own meter and service line, even if it is not immediately required for reasons of public health, as Lakes Region field staff determined. For example:

- First, for operational reasons, a separate turn off should always be required when a building may be unoccupied during winter months. Pipes freezes due to loss of heating, water leaks in internal plumbing and other issues can result in water loss and property damage.<sup>3</sup> As presently configured, both buildings could be rented separately or occupied while the owner is away. Service cannot be shut-off without turning off water supply to both buildings. If a freeze, leak or other problem arose in one building while its was unoccupied or its owner away, the first or second building might be un-accessible. It is important that Lakes Region be able to turn off each building separately, especially when they may be separately occupied, accessed or owned by different persons at any time.
- Second, as separate service line and meter are required because the present configuration prevents the utility from disconnecting one customer service without disconnecting both. This is an additional reason why the Commission's rules contemplate separate meters and curb stops being installed in the case of apartments. Puc 606.04 (g) ("Curb stops shall be placed at the customer's property line except in unusual situations such as

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<sup>3</sup> For this and other reasons, insurance policies typically (and prudent practice always) require that whenever a building is unoccupied for more long periods, the water line into a building be turned off.

service to an apartment or to a condominium.”). The owner of the property could offer either unit for long term rental at any time.

- Third, meter service is required by the Commission’s rules and DES water conservation rules. Having one meter serve two units leaves Lakes Region unable to allocate costs in a rental environment where, for example, a leakage occurs in internal plumbing. Having a meter in a separate building that Lakes Region may be unable to access if the owner is away makes it more difficult and costly for Lakes Region to provide service. Lakes Region is not allowed to refuse service. RSA 374:1. It can only require that the service connections comply with the terms of its tariff and the rules adopted by the Commission.

These are just a few of many reasons why the Commission’s rules prohibit tandem services, 606.04 (j)(2); require individual shut offs, 606.04 (j)(1); and require that the “size, design, material and installation of the service pipe shall conform to such requirements of the utility”, 606.04 (d). By allowing a service configuration that does not comply with the Commission’s rules, Order No. 26,014 may increase Lakes Region’s cost to provide service and impair its ability to serve customers.

Lakes Region did not present evidence concerning all of the reasons that separate service lines and meters are required because the issue before the Commission in this proceeding was whether Lakes Region’s requirement of a second base charge was unjust or unreasonable in light of the Commission’s rule Rule Puc 606.04 (j) which specifically prohibit tandem services. What a future tariff could be permitted to require in the future was not an issue notice or to be considered in this proceeding which only concerned what

the legal requirements that applied to service. As a result, Lakes Region requests that the Commission grant rehearing or reconsideration of the last sentence of Order No. 26,014 and make no determination as to how a future tariff may or may not apply until such time as its existing Tariff is amended.

## **II. STANDARD FOR REHEARING**

As the New Hampshire Supreme Court explained in *Dumais v. State Personnel Comm'n*, 118 N.H. 309 (1978), “[t]he purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in this original decision, and thus invites reconsideration upon the record upon which that decision rested.” *Id.* at 311 (citing *Lambert v. State*, 115 N.H. 516 (1975) (quotations omitted)). Rehearing is also appropriate where new evidence becomes available which could not have been presented at the hearing. *Appeal of Gas Serv., Inc.*, 121 N.H. 797, 801 (1981); *Dumais*, 118 N.H. at 312.

## **III. CONCLUSION**

For the reasons stated herein, Lakes Region respectfully requests that the Commission grant rehearing or reconsideration of Order No. 26,014 pursuant to RSA 541, suspend Order No. 26,014 pending consideration of this motion pursuant to RSA 365:21, and grant such other relief as justice may require.

Respectfully submitted,

**LAKES REGION WATER  
COMPANY, INC.**

By its Counsel,

**UPTON & HATFIELD, LLP**

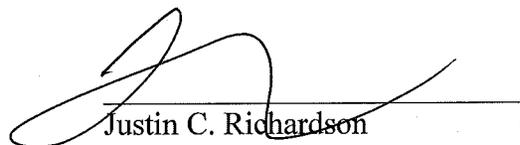


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service list for this proceeding.



Justin C. Richardson