

State of New Hampshire

Public Utilities Commission

DW 18-056

Lakes Region Water Company, Inc.

Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions

**Objection to Lakes Region Water Company, Inc.'s
Motion for Rehearing of Order No. 26340**

On April 27, 2020, Lakes Region Water Company, Inc. (Lakes Region or the Company), filed a Motion for Rehearing of Order No. 26,340 (Motion). Staff of the New Hampshire Public Utilities Commission (Staff) hereby Objects to this Motion and states as follows:

1. RSA 541:4 requires a motion for rehearing to set forth fully every ground upon which it is claimed that the decision or order complained is unreasonable or unlawful. The Commission's Order is neither unreasonable nor unlawful. The Company chiefly reiterates or modifies its retroactive ratemaking arguments expressed in its response to Staff's July 29, 2019 recommendation, filed on August 9. Lakes Region also contends that the Commission erred by finding that the Company failed to file a timely motion for rehearing. As stated below, none of the arguments meets the standard requiring the Commission to grant rehearing.
2. Order No. 26,340 (the Order) issued on March 26, 2020, in this docket, directed the Company to record annual and cumulative regulatory liabilities to track tax savings realized from recent corporate tax rate decreases, and to record a regulatory liability equivalent to its calculated excess deferred income tax reserve. In doing so, the

Commission relied upon its power pursuant to RSA 374:8, which authorizes the Commission “to establish a system of accounts and records to be used by public utilities for their business within the state, may classify them and prescribe a system of accounts for each class, and may prescribe the manner in which said accounts shall be kept.”

3. In the Order, the Commission further relied upon *Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions*, Order 26,096 (January 3, 2018), which the Commission issued in response to the change in federal and state corporate tax rates effective January 1, 2018. Those tax rate changes included the “enactment of the ‘Tax and Jobs Act’ (TCJA) [which] reduced the federal corporate income tax rate for most utilities from 35 percent to 21 percent” and the reduction of the Business Profits Tax (BPT), from 8.2 percent to 7.9 percent, and the Business Enterprise Tax (BET), from 0.72 percent to 0.675 percent, at the state level. *Id.* at 1.
4. The Order, furthermore, cited and summarized the requirements established by Order No. 26,096 in its reasoning to support its conclusion. The Commission noted that Order No. 26,096 directed “every public utility ‘to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax resulting from the 2017 [TCJA], as well as the estimated reduction in the State of New Hampshire BET and BPT.’” The Order at 5. “The Commission further established the calculation for the deferral, and directed that the result ‘shall be entered as a deferred liability until final rates are established for the utility in a general rate case, or until otherwise ordered by the Commission.’” *Id.* “The Commission ordered each utility to calculate the excess deferred income tax caused by the tax decrease, and recognize ‘as a deferred liability the estimated reduction of the utility’s revenue requirement.’” *Id.* “Lastly, the Commission ordered

each utility to file a proposal ‘no later than April 1, 2018, to address the effects of the changes in tax laws, including financial information that is sufficient to establish a revenue requirement that reflects prospectively the impacts of those changes.’” *Id.*

5. The Order also addressed the individual arguments raised by the Company in its August 9 opposition response to Staff’s recommendation for the Commission to approve the recording of these regulatory liabilities by the Company. Those arguments included prohibition of the Commission’s accounting measures as single-issue and retroactive ratemaking, and that it would violate the Company’s prior rate case settlement agreement. The Order at 7-8. The Commission ultimately agreed with Staff and disagreed with the Company’s arguments. *Id.* at 5-7.
6. The Commission further denied the Company’s arguments citing Lakes Region’s failure to properly object to the original Order No. 26,096, which dictated the accounting measures to all utilities. *Id.* at 7. The Commission further cited that fairness dictated that these accounting measures apply to Lakes Region, as it did for every other utility regulated by the Commission, citing a lack of justification for special treatment of the Company. *Id.*
7. Lakes Region’s bases its Motion on four claims that: 1) the Company’s rates were lawfully approved, just and reasonable; 2) an adjustment to rates for a future refund to customers cannot be ordered without a hearing; 3) the Commission cannot modify or revoke the orders approving its rates without a hearing; and 4) the Commission erred by finding that the Company failed to move for rehearing. The Commission cannot grant the Company rehearing based on these four claims, as shown further below.

8. The Commission can deny rehearing as the first three claims do not provide new evidence or theories, but instead merely reassert a prior arguments. Pursuant to RSA 541:3, the Commission may grant rehearing when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding. *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977). Good reason may also be shown by identifying specific matters that were “overlooked or mistakenly conceived” by the Commission. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful Motion for Rehearing does not merely reassert prior arguments and request a different outcome. *Investigation Into Grid Modernization*, Order No. 26,275 at 3 (July 26, 2019).
9. Lakes Region’s first three arguments invoke either the Commission’s rate making or rate adjustment power and the procedural safeguard of a hearing. Both the possibility of retroactive and single-issue ratemaking as a prohibition against the recording of the regulatory liabilities were argued in the Company’s response to Staff’s recommendation. Those same arguments were further addressed by the Commission in the Order. While modified slightly in its Motion, the Company is merely reasserting its prior ratemaking arguments already considered by the Commission in the Order. Those arguments were sufficiently examined in the Order. As such, those arguments for rehearing should be denied.
10. The Company, furthermore, even acknowledges that the Commission is not invoking its ratemaking authority pursuant to RSA 378, and “does not object” to the recording of the regulatory liabilities as directed in the Order. Motion at 1. Thus, the first three arguments related to ratemaking are not even applicable. As the Commission has not

ruled upon the Company's rates, but instead only required the Company to follow a proscribed method of accounting, the arguments related to rates and ratemaking are not yet ripe for discussion. Those arguments will only be ripe if and when the Commission adjusts Lakes Region's rates in consideration of the recorded regulatory liabilities.

11. Lakes Region, however goes on to argue that the recording of the regulatory liabilities amounts to a substantial taking of the Company's "property rights and interests in just and reasonable rates." The Company also argues that the accounting measures, which it deems a "retroactive adjustment," is unlawful as the Commission has not proven that the rates it charges is unjust and unreasonable. *Id.* at 2. The Company, however, offers no precedent or case law to support the theory that the Commission's authority to proscribe these accounting measures to the utilities it regulates, pursuant to RSA 374:8, is unlawful.
12. The Company also contends that its rates cannot be adjusted, either through the modification of a prior order, pursuant to RSA 365:28, or through a finding of unjust and unreasonable rates, per RSA 378:7, without a hearing. Staff agrees to the Company's interpretation of those statutes and the hearing requirement. Staff, however, disagrees with their applicability in the instant case. Again, while the Commission is not adjusting rates pursuant to either statute, or making any rate adjustment pursuant to any statute, these arguments should not be entertained as they are inapplicable to a proceeding that dictates accounting measures to a utility - as it has to all other utilities.
13. Lakes Region's final claim contends that the Commission erred in finding that the Company failed to move for rehearing of Order No. 26,096. That claim also fails to merit a rehearing. First, while the Commission discussed this reasoning in its analysis, it is not the sole rationale the Commission based its decision upon in the Order. The Order

goes into detail regarding all of the other arguments posed by the Company in its response to Staff's recommendation. That provides ample evidence that the Commission based its decision on a multitude of factors, all of which, taken individually or collectively, would produce the same result. Argumentatively, if the Commission did err in its finding, the Order would still stand based on the remaining reasoning.

14. The Company, furthermore, cites distinguishable or inapplicable precedent regarding the timing of motions for rehearing. *City of Nashua*, Order No. 24,948 (2009) and *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. 267 (2013) both hold that motions for rehearing do not necessarily need to be made after every order that gives rise to the arguments that it has raised on appeal. Those decisions, however, reinforce the 30 day statutory limit, pursuant to RSA 541:3, within which a movant must move for rehearing, and may do so “in respect to any matter determined in the action or proceeding.” (emphasis added). Nothing in those decisions alleviates that 30-day filing burden or provides exceptions for extremely late filings, especially one such as the Company's which was some 520 days after Order No. 26,096 was issued.
15. Those decisions are also distinguishable as they discuss the late filing for rehearing of matters within the same docket or proceeding. The instant case is very different in that Order No. 26,096 is a separate, distinct decision in a completely separate and distinct docket.
16. Furthermore, Lakes Region mischaracterizes Order No. 26,096 as merely investigatory. The Company states that “[n]o determinations were made in the [Order No. 26,096] proceeding, except to require that all public utilities submit proposals for review and approval in a different proceeding. That is patently untrue. As stated above in Paragraph

4, Order No. 26,096 proscribed specific accounting measures for all utilities. The Commission did not merely require each utility to file proposals for review.

17. As such, if the Company disputed the accounting requirements mandated by Order No. 26,096, which was a separate proceeding altogether, then it should have filed a motion for rehearing within 30 days after its issuance, or February 2, 2018. Thus, the Company's argument that the Commission erred by ruling that Lakes Region failed to move for rehearing is unsustainable.

WHEREFORE, for the reasons set forth hereinabove, Staff respectfully requests that the Commission:

1. Deny Lakes Region's Motion for Rehearing; and
2. Grant such further relief as is just, equitable and appropriate.

Respectfully submitted,

Staff of the Public Utilities Commission

By its Attorney,

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I hereby certify that, on March 4, 2020, a copy of this Objection has been sent electronically to the Commission, the Office of the Consumer Advocate, and the Service list in this matter.

/s/ Christopher R. Tuomala
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