

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**  
**Lakes Region Water Company, Inc.**  
**Docket No. DW 18-056**  
***Motion for Leave to Reply to Objection***

NOW COMES Lakes Region Water Co., Inc., (“Lakes Region”) and moves for leave to file this brief reply to Staff’s *Objection* of May 4, 2020 as follows:

1. Lakes Region requests leave to file this brief reply in response to Staff’s *Objection*. It is hoped that this *Reply* will help the Commission understand and resolve the issues raised without the need for further proceedings or an appeal.

2. Paragraph 1 of Staff’s *Objection* states that Lakes Region “chiefly reiterates or modifies its retroactive ratemaking arguments expressed in its response to Staff’s July 29, 2019 recommendation, filed on August 9.” Paragraph 8 states that “[t]he Commission can deny rehearing as the first three claims do not provide new evidence or theories, but instead merely reassert a prior arguments.” Staff is largely correct that Lakes Region has repeated arguments it made during the proceeding on August 9, 2019. However, one of “[t]he purpose[s] of a rehearing is to direct attention to matters said to have been ... mistakenly conceived in this original decision, and thus invites reconsideration upon the record upon which that decision rested.” *Dumais v. State Personnel Comm’n*, 118 N.H. 309, 311 (1978) citing *Lambert v. State*, 115 N.H. 516 (1975) (quotations omitted). It is important that Lakes Region obtain a ruling on the issues raised in its motion because if Commission agrees, as RSA 378:7 expressly states,

that Lakes Region's rates will not be adjusted in its subsequent rate case without a finding that its rate rates were unjust and unreasonable, then this proceeding may be resolved without the need for an appeal or further proceedings.

2. Paragraph 12 states that "the Commission is not adjusting rates pursuant to either statute, or making any rate adjustment pursuant to any statute" in this proceeding and that Lakes Region's "arguments should not be entertained as they are inapplicable to a proceeding that dictates accounting measures to a utility". Lakes Region finds relief in Staff's suggestion that the Commission has not made "any rate adjustment pursuant to any statute". However, the concern is that the estimated liability ordered by the Commisison will in fact operate as a rate adjustment that is retroactive to January 1, 2018 without affording Lakes Region a hearing as required by RSA 378:7 to show that it did not charge unjust or unreasonable rates at any time.

3. Paragraph 13 correctly observes that Order No. 26,340 stated three reasons for denying Lakes Region's August 9, 2019 request. Order No. 26,340 stated on Page 7: "First, Lakes Region waived any objection to the accounting requirements mandated by the Commission in Order 26,096" because it failed "to file a motion for reconsideration within thirty days"; "Second, as a matter of fairness, if the Company's request were to be granted, we would effectively be treating Lakes Region differently than every other utility that has complied with the Commission's Order."; and "Third, the Company's argument that the Commission's decision implements both single issue and retroactive ratemaking fails as that argument is not ripe for review." The suggestion that Lakes Region did not address all three reasons is mistaken. Both the second and third reasons were addressed by Lakes Region's argument based on the statute.

4. Regarding the second reason, Lakes Region's *Motion for Rehearing* requested that the Commission apply RSA 378:7 which controls over concerns of alleged fairness to other utilities. By law, the Commission "may not add to, change, or modify [statutory law] by regulation or through case-by-case adjudication." *Appeal of Monsieur Henri Wines, Ltd.*, 128 N.H. 191, 194 (1986); *Appeal of Local Gov't Ctr.*, 165 N.H. 790, 809 (2014) quoting *In re Jack O'Lantern, Inc.*, 118 N.H. 445, 448 (1978); *State v. Normand*, 76 N.H. 541, 546 (1913) (the legislature may not delegate the "power to make the law"). What may or may not be appropriate for other utilities is not known to Lakes Region or material this case. Lakes Region asks only that the Commission recognize that any rate adjustment based on the deferred liability is governed by RSA 378:7.

5. As to the third reason, the Commission's determination in Order No. 26,340 that it "is not presently invoking its ratemaking authority pursuant to RSA 378, by directing Lakes Region to modify its existing rates or refund customers" merely begs the question raised in Lakes Region's *Motion for Rehearing* as to whether any potential refund would be governed by RSA 378:7 or by some other legal standard. Lakes Region's request that the Commission determine the legal standard to be applied to the deferred liability ordered is a reasonable request considering the amounts involved.

6. Lastly, as to the first reason, Paragraph 15 argues that the cases cited by Lakes Region holding that successive motions for rehearing were not required "are also distinguishable as they discuss the late filing for rehearing of matters within the same docket or proceeding." However, Order No. 26,096 made no final determinations and instead directed opening "a separate docket for each of the filings received and will consider appropriate rate impacts in those company-specific dockets." Page 3. The

Commission cannot lawfully convert a preliminary order to open an investigations into a final order subject to rehearing and appeal, without providing notice of its intent to do so. *See e.g. New Hampshire Dept. of Environmental Services v. Mottolo*, 155 N.H. 57 (2007) (“having received no notice that the court would consolidate the merits hearing with the temporary hearing, the defendant was effectively denied a full opportunity to develop his evidence and arguments against declaratory relief.”). The Commission gave no such notice in Order No. 26,096.

Respectfully submitted,

**LAKES REGION WATER  
COMPANY, INC.**

By its Counsel,

**NH WATER LAW**



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Dated: May 11, 2020

**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.



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Justin C. Richardson