

**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**

**Order Directing Lakes Region Water Company, Inc., to Record Corporate Liabilities**

**ORDER NO. 26,340**

**March 26, 2020**

This order directs Lakes Region Water Company, Inc., to record annual and cumulative regulatory liabilities to track tax savings realized from recent corporate tax rate decreases. The Commission also orders Lakes Region to record a regulatory liability equivalent to its calculated excess deferred income tax reserve.

**I. BACKGROUND AND PROCEDURAL HISTORY**

Effective January 1, 2018, federal and state corporate tax rates changed. The enactment of the “Tax Cuts and Jobs Act” (TCJA) reduced the federal corporate income tax rate for most utilities from 35 percent to 21 percent. *Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions*, Order No. 26,096 (January 3, 2018). At the state level, the Business Profits Tax (BPT) was reduced from 8.2 percent to 7.9 percent and the Business Enterprise Tax (BET) was reduced from 0.72 percent to 0.675 percent. *Id.*

In Docket No. IR 18-001, the Commission opened an investigation into public utility treatment of the effects of corporate tax rate reductions and directed each utility to file a proposal addressing those effects no later than April 1, 2018. *Id.* Given the changes in state and federal tax law, each affected utility was ordered to calculate its interim tax savings and record a deferred liability. *Id.* The Commission also directed that each filing include financial

information sufficient to establish a revenue requirement reflecting the effects of those changes on customer rates. *Id.*

The Office of the Consumer Advocate (OCA) filed its letter of participation on April 9, 2018.

On October 9, 2018, after several deadline extensions, Lakes Region Water Company, Inc. (Lakes Region or the Company), filed its proposal. Commission Staff (Staff) developed a recommendation with the assistance of Blue Ridge Consulting Services, Inc. (Blue Ridge). On July 29, 2019, Staff submitted its recommendation with Blue Ridge's report attached, and the Company filed a response to the recommendation on August 9.

The Company's initial filing and any other subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted at <http://puc.nh.gov/Regulatory/Docketbk/2018/18-056.html>.

## **II. POSITIONS**

### **A. Lakes Region's Initial Filing**

Lakes Region provided a revised set of settlement schedules based on the Company's most recent rate proceeding, Docket No. DW 15-209. Those schedules included a total calculated tax savings of \$33,228, comprised of \$28,835 in tax savings related to its last approved revenue requirement and \$4,393 in tax savings related to the initial step adjustment. The tax savings did not include the second step adjustment approved in Docket No. DW 15-209, which was calculated pursuant to the current tax rates. Lakes Region did not address the excess deferred income tax (EDIT), nor did it propose a plan for the prospective establishment of a revenue requirement that reflected the tax law changes.

## **B. Staff**

### **1. Tax Savings**

Staff determined Lakes Region's tax savings by adopting Blue Ridge's findings, partially adjusting to account for Company responses, and applying the Federal Energy Regulatory Commission (FERC) formula for tax reductions to the Company's most recently approved revenue requirement. Blue Ridge and Staff noted that the calculations are consistent with recent Commission rulings in proceedings similar to this. Commission Staff Recommendation at 3 (July 29, 2019).

Staff recommended that the Commission direct Lakes Region to record an annual regulatory liability of \$42,707, to track tax savings realized through the effective date of the Company's next approved base rates in a general rate proceeding. The deferred liability would accumulate, as follows: the 2018 year-end balance would be \$42,707; the 2019 year-end balance would be \$85,414 (\$42,707 + \$42,707); and the 2020 year-end balance would be \$128,121 (\$85,414 + \$42,707).<sup>1</sup>

### **2. EDIT**

Staff recommended that the Commission direct the Company to record a separate regulatory liability for excess deferred income tax of \$141,995. Staff further proposed that the annual amortization of this amount, representing income tax credits to customers, should be resolved in Lakes Region's next general rate proceeding.

Staff concluded that its recommendations provided a full and satisfactory resolution of all issues contained within the instant docket, and recommended that the docket be closed. *Id.*

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<sup>1</sup> This trend, of adding \$42,707 to the prior year's balance would continue until the next full rate case.

### **C. OCA**

The OCA concurred with Staff's recommendation.

### **D. Lakes Region Response**

The Company requested that the Commission not accept Staff's recommendation. Lakes Region argued that the Commission should instead direct the Company to file a rate case by July 1, 2020, to address the Company's concerns of the tax law change and the impact of those changes on the Company's rates.

Lakes Region offered five arguments in support of its request: 1) approving Staff's recommendation violates the settlement agreement, approved by Order No. 25,969, which did not contain an adjustment for an exogenous event such as a tax law change; 2) the Company has not over-earned based on the tax rate change, as other increasing costs offset the difference, thus Lakes Region's rates remain lawful, just, and reasonable; 3) Lakes Region's lower effective tax rate of 26.4 percent, as acknowledged by Staff, did not result in over-earning by the Company, and approval of Staff's recommendation would result in a regulatory taking of lawfully earned income; 4) approval of Staff's recommendation results in single-issue ratemaking, which is prohibited by the Commission, citing *Town of Hampton*, Order No. 26,263 (June 24, 2019) and *Connecticut Valley Electric Company*, Order No. 23,887 (December 31, 2001); and 5) the Commission lacks authority to order a retroactive refund without notice, hearing, and evidence of unreasonable rates pursuant to RSA 378:7, which provides the authority for the Commission to fix rates.

### **III. COMMISSION ANALYSIS**

Under RSA 374:8, the Commission may establish a system of accounts and records to be used by public utilities for their business within this 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. The Commission's power to regulate utility accounting extends to prescribing methods for an individual utility. *See New Hampshire Electric Cooperative, Inc.*, Order No. 20,671 (November 19, 1992) (granting utility a method of accounting for a promissory note). Pursuant to its authority under RSA 374:8, the Commission ordered 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 Tax Act, as well as the estimated reduction in the State of New Hampshire BET and BPT." Order No. 26,096 at 2. 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.*

As discussed in Staff's recommendation, we recognize that changes in federal and state tax laws produced savings benefits for the Company. The decrease in the corporate tax rates also produced an EDIT reserve for Lakes Region. The result is that Lakes Region's customers have been paying rates higher than necessary to cover the Company's tax liabilities.

We agree with Staff that the Company should apply the FERC formula to determine the effects of the lower federal and state tax rates. Consistent with prior decisions, we conclude that

use of the FERC formula is a reasonable method to calculate the annual tax savings. *Abenaki Water Company, Inc.*, Order No. 26,251 at 5 (May 10, 2019).

We recognize that the tax savings realized by Lakes Region may vary from year to year based on the actual annual revenues collected. We also recognize that the task of recalculating those tax savings annually could be burdensome because of the complexity of such a calculation, especially where the recalculation will likely result in a *de minimus* difference from the amount identified by Staff. For the minimization of error associated with such calculation, and to ease the administrative burden of time and resources invested by both the Company and Staff, we conclude that the annual tax savings should be accounted for using a set amount. We therefore direct Lakes Region to record the annual and cumulative regulatory liability as of January 1, 2018, and through the effective date of the Company's next approved permanent base rate adjustment, as recommended by Staff. We direct Staff to monitor the Company's annual and cumulative regulatory liability contained in Lakes Region's annual reports filed with the Commission, and to file a recommendation for a subsequent rate proceeding if the resultant accumulation of tax savings warrants such action.

We note that the accumulation of tax savings may generate income for the Company in the form of interest. We conclude, however, that the amount of interest collected will be limited given the tax savings the Company will recognize. Thus, we find it reasonable for the Company to record the deferred liability of the tax savings without an interest component.

We also agree with Staff's recommendation that Lakes Region should record a total \$141,995 EDIT reserve regulatory liability, and that an appropriate amortization period resulting in annual customer credits be determined in the Company's next rate proceeding.

We deny the Company's request to reject Staff's recommendation and instead order Lakes Region to file a full rate case in 2020, for several reasons. First, Lakes Region waived any objection to the accounting requirements mandated by the Commission in Order 26,096. As that Order was issued in a separate docket, DW 18-001, on January 3, 2018, the Company had an opportunity to file a motion for reconsideration within thirty days, or by February 4, 2018. *See Unitil Energy Systems, Inc.*, Order No. 25,915 at 5-6 (June 28, 2016) (motions for reconsideration governed by RSA 541:3, which requires the filing of motion for reconsideration within 30 days of decision); N.H. Admin. R., Puc 203.33. The Company filed its request a full 18 months later on August 9, 2019, which is approximately 520 days beyond the 30-day period to file a motion to reconsider. Accordingly, we rule that Lakes Region waived any objection to the requirements set forth in Order 26,096.

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. The Company presented no evidence justifying special treatment, and allowing such disparate treatment would be patently unfair to all other regulated utilities. Accordingly, we deny the Company's request.

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. *See University System of New Hampshire Board of Trustees v. Dorfsman*, 168 N.H. 450 at 455 (2015) (claim not fit for decision where challenged action is not final). The Commission is not presently invoking its ratemaking authority pursuant to RSA 378, by directing Lakes Region to modify its existing rates or refund customers. Absent a change to Lakes Region's rates, arguments based

on single-issue and retroactive ratemaking are simply not ripe for the Commission's consideration, and we rule as such.

Lastly, the Company's argument that Staff's recommendation, if approved, would violate the settlement agreement terms approved by Order No. 25,969, which set permanent rates for Lakes Region, similarly fails. We are not directing Lakes Region to modify its rates, pursuant to RSA 378 at this time, but merely requiring the establishment of a utility-wide accounting method pursuant to RSA 374:8.

We rule that the treatment of the tax savings, as outlined above, is an appropriate resolution of the issues.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Lakes Region Water Company, Inc., shall address the effects of the decreases in corporate tax rates, as detailed in the body of this order; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc., shall record annual and cumulative regulatory tax savings deferred liabilities in the amount of \$42,707 annually. Such deferred liabilities shall be recorded as of January 1, 2018, until the effective date of the Company's next approved permanent base rate adjustment; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc., shall record a total \$141,995 excess deferred income tax reserve regulatory liability; and it is

**FURTHER ORDERED**, that the issue of an appropriate amortization period resulting in annual credits should be resolved in the Company's next general rate proceeding; and it is

**FURTHER ORDERED**, that Staff shall monitor the amount of tax savings included in the Company's annual and cumulative regulatory liability, contained in Lakes Region Water Company's annual report; and it is

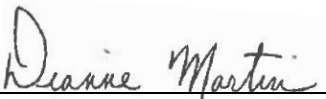


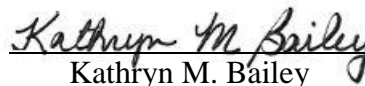
**FURTHER ORDERED**, that Lakes Region Water Company, Inc., shall file a rate case no later than December 31, 2020, utilizing a 2019 test year; and it is

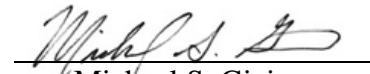
**FURTHER ORDERED**, that Lakes Region Water Company, Inc.'s request is **DENIED**; and it is

**FURTHER ORDERED**, that this docket shall be closed.

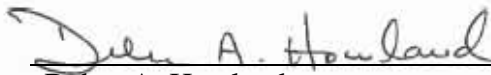
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 2020.

  
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Dianne Martin  
Chairwoman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director

## Service List - Docket Related

Docket# : 18-056

Printed: 3/26/2020

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