

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 19-177

LAKES REGION WATER COMPANY, INC. – DOCKHAM SHORES

Request for Change in Rates

Order Approving Rate Increase

ORDER NO. 26,446

January 28, 2021

APPEARANCES: NH Water Law, by Justin C. Richardson, Esq., for Lakes Region Water Company, Inc.; and Staff of the Public Utilities Commission by Christopher R. Tuomala, Esq.

In this order, the Commission authorizes Lakes Region Water Company, Inc., to charge its current Consolidated General Service-Metered Customer rates to its Dockham Shores customers with service rendered on and after the date of this order. The Commission also permits Lakes Region Water Company, to set temporary rates at the Dockham Shores' current rates, effective February 10, 2020. The approved rates will be reconciled with those temporary rates.

I. PROCEDURAL HISTORY

Lakes Region Water Company, Inc. (Lakes Region or the Company), is a regulated water utility that serves approximately 1,813 customers in 18 separate systems, including Dockham Shores Estates (Dockham Shores). The Commission approved Lakes Region's acquisition of Dockham Shores on November 10, 2016, in Order No. 25,964.

The Company subsequently made significant plant improvements to Dockham Shores, including the construction of a new pump station. Pursuant to Order No. 25,964, Lakes Region filed for a \$53,894 step increase to its Dockham Shores revenue requirement in 2018, reflecting those improvements. The Commission ultimately approved a \$6,620 annual increase in

revenues. *Lakes Region Water Company, Inc. and Dockham Shores Estates Water Company, Inc.*, Order No. 26,272 (July 11, 2019).

On December 23, 2019, Lakes Region filed a petition seeking a permanent rate increase for its Dockham Shores' customers. The Company sought a 106.47 percent increase in Dockham Shores' rates. The Company followed with a petition for a temporary rate increase on January 14, 2020. Along with those petitions, Lakes Region filed temporary and permanent rate tariffs, with an effective date of January 31, 2020.

On January 30, 2020, the Commission issued Order No. 26,329, which suspended Lakes Region's filed tariffs and scheduled a prehearing conference on March 4. The Company submitted its affidavit of publication and mailing on February 13, which indicated that customers received notice by February 10, 2020.

On December 4, 2020, Commission Staff (Staff) filed a settlement agreement on behalf of itself and Lakes Region (collectively, the Settling Parties), proposing a global resolution for the docket (Settlement Agreement). The Commission held a hearing regarding the Settlement Agreement on December 17, 2020.

Lakes Region's initial filings and any subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-177.html>.

II. SUMMARY OF SETTLEMENT AGREEMENT

A. Temporary Rates

In the Settlement Agreement, Lakes Region and Staff recommended that the Commission approve temporary rates effective during the pendency of the rate proceeding at Dockham Shores' current rates. The Settling Parties agreed that the books on record with the Commission, filed by the Company, support Lakes Region's request for temporary rates. The Settling Parties

agreed that the Commission should approve temporary rates for services rendered on and after February 10, 2020, which is the date that Lakes Region provided effective notice of this proceeding to its Dockham Shores' customers.

B. Permanent Rates

The Settlement Agreement provides that the Dockham Shores' permanent rates should be increased to the equivalent rate currently charged by Lakes Region to its Consolidated General Service-Metered Customers. Lakes Region and Staff concurred that the capital improvements undertaken by Lakes Region at Dockham Shores are prudent, used, and useful. The Agreement provides further that the Company should recover its investment in those capital improvements, and a reasonable return on its invested plant, through the permanent rate increase.

The Settlement Agreement does not recommend inclusion of Dockham Shores into the consolidated rate group of systems. The Company and Staff, however, agreed that such determination should be made in the context of the Company's current full rate case (Docket No. DW 20-187). The Settling Parties further agreed that Lakes Region would file two separate permanent rate schedules: (1) one set that would examine Dockham Shores' inclusion in the Company's consolidated permanent rate structure; and (2) one set that would consider the continuation of Dockham Shores as a stand-alone rate entity with its own permanent rates.

C. Additional Provisions

The Settlement Agreement included five additional terms: (1) temporary-permanent rate recoupment; (2) rate case expenses; (3) closure of the current docket; (4) examination of acquisition, financing, and step increase costs; (4) removal of audit costs; and (5) contingency on approval of Lakes Region's financing request in DW 19-135.

The Settling Parties agreed that the Company should have the opportunity to reconcile the difference between the temporary rates and permanent rates by implementing a surcharge on

its Dockham Shores' customers. The surcharge would be an amount equal to the difference between the revenues actually collected during the recoupment period (February 10, 2020, through the issuance of an Order on the Settlement Agreement) and the revenues it would have collected if the permanent rates had been in effect during that same period. The Settling Parties also agreed that Lakes Region should be allowed the opportunity to recover its reasonable rate case expenses for this proceeding. Lakes Region would file its temporary-permanent rate calculation, final rate case expenses, and proposed surcharges for recovery no later than 30 days from the date of the Commission's Order on the Settlement Agreement.

In addition, the Settling Parties agreed that, once orders are issued regarding the temporary-permanent rate recoupment and rate case expenses, followed by approved compliance tariffs, this docket should be closed. The Settling Parties also agreed that Staff will examine and evaluate the acquisition, financing, and step increase costs associated with Dockham Shores in the Company's current rate case (DW 20-187). The Settling Parties agreed, however, that Lakes Region will not seek recovery of costs incurred relative to the Commission's audits in Docket No. DW 16-619 (the Dockham Shores acquisition by Lakes Region proceeding) and the instant matter. The Settling Parties, lastly, agreed that the Settlement Agreement is conditioned upon the Commission's approval of the Company's proposed financing in Docket No. DW 19-135.

III. COMMISSION ANALYSIS

Unless precluded by law, informal disposition may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to N.H. Admin. R., Puc 203.20(b), the Commission may approve the informal disposition of any contested case if it determines that the result is just and reasonable and serves the public interest. The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line

with their expectations, and is often a better alternative to litigation. *Pennichuck Water Works, Inc.*, Order No. 26,383 at 12-13 (July 24, 2020). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.* at 13.

A. Temporary Rates

Pursuant to RSA 378:27, the Commission may approve temporary rates for the duration of a rate proceeding if the Commission finds that the public interest so requires and the reports of the public utility filed with the Commission indicate that the temporary rates are reasonable. The standard for approval of temporary rates, which are reconcilable, is less stringent than that for permanent rates. *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 660 (1991) (citing *New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518 (1949)).

The Settlement Agreement requests that the Commission approve temporary rates at the level of current rates. The Settling Parties agreed that setting temporary rates provides a reasonable return to Lakes Region on its invested plant at Dockham Shores. The record supports that conclusion. Staff testified that, according to the Company's books and records on file at the Commission at the time of the temporary rate request, Lakes Region is entitled to temporary rates. Transcript of December 17, 2020 Hearing (Tr.) at 36.

We find that, given Lakes Region's significant plant investment in Dockham Shores, temporary rates at Dockham Shores current rates were, during the pendency of this proceeding, sufficient to yield a reasonable return to the cost of the property of the utility used and useful and in the public service, less accrued depreciation. RSA 378:27. We furthermore find, based on the Settlement Agreement and Staff's testimony, that the temporary rates are supported by the reports filed with the Commission by Lakes Region. *Id.* Accordingly, we find that temporary rates set at current rates are just and reasonable and in the public interest, and we will approve

the temporary rate request, subject to reconciliation. *See* RSA 378:29 (allowing for recoupment of the difference between the temporary rate and the permanent rate approved).

The Settlement Agreement also requests that the effective date be set for February 10, 2020, the date on which Dockham Shores customers received notice of the temporary and permanent rate request. RSA 378:27 allows the Commission to authorize effective dates as early as the filing date of the petition for permanent rate change. *See Appeal of Pennichuck Water Works*, 120 N.H. 562, 567 (1980) (filing date is earliest date on which PUC may order temporary rates to take effect). “Setting the effective date on or after customers receive notice, provides customers the opportunity to adjust consumption behavior before assuming an increased rate, or in this case, a rate subject to recoupment.” *Pennichuck Water Works, Inc.*, Order No. 26,373 at 8 (June 30, 2020).

Based on the Settlement Agreement and Staff’s testimony that Dockham Shores customers’ received notice by February 10, 2020, we find the requested effective date to be appropriate. Accordingly, the effective date is set as February 10, 2020.

B. Permanent Rates

The Commission is authorized to fix rates after a hearing, upon determining that the rates are just and reasonable. RSA 378:7. In circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. In determining whether rates are just and reasonable, the Commission serves as arbiter between the interests of customers and those of regulated utilities. *See* RSA 363:17-a; *see also EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 17 (March 10, 2011).

The Settlement Agreement requests Dockham Shores rates increase to the Company’s current Consolidated General Service-Metered Customers rate. That equates to a 27.59 percent

increase in Dockham Shores' current rates. If implemented, the average quarterly increase faced by a Dockham Shores customer would be \$48.22, or \$192.87 annually.

The Settlement Agreement states that the rate increase is based on significant plant improvements, and that those improvements are prudent, used, and useful. At hearing, Staff consulting engineer Douglas Brogan stated that there was adequate support for Lakes Region's decision to make those improvements and testified that the increases to plant are prudent, used, and useful, and in service. Tr. at 32. Staff further testified that the resulting rates are just and reasonable. *Id.* at 39. The Settling Parties, lastly, agreed to increase the Dockham Shores rates to the Company's current Consolidated General Service-Metered Customers rates in anticipation of Lakes Region's request to include Dockham Shores into its consolidated rate group of systems, in Docket No. DW 20-187.

In order to approve the rate increase, the Commission must determine whether the investments included are prudent, used, and useful. RSA 378:28. As noted above, both Staff and the Company view the plant improvements requested for recovery to be used and useful, their costs to be prudently incurred, and the requested rates to be just and reasonable. The record supports that conclusion. Accordingly, we find the expenditures to be prudent, that the resulting rates are just and reasonable, and that recovery of those rates by Lakes Region is in the public interest.

C. Additional Provisions

The Settlement Agreement included five additional terms: (1) temporary-permanent rate recoupment; (2) rate case expenses; (3) closure of the current docket; (4) examination of

acquisition, financing, and step increase costs; (4) removal of audit costs; and (5) contingency on approval of Lakes Region's financing request in DW 19-135.

We have reviewed the evidence presented regarding the additional provisions, including Staff's testimony at hearing. As the requested rates have been approved above, it is appropriate that Lakes Region be allowed to file for both its reasonable rate case expenses and its temporary-permanent rate recoupment. *See Hampstead Area Water Company, Inc.*, Order No. 26,185 (October 30, 2018) (approving reasonable rate case expenses and authorizing recoupment of the difference between the utility's temporary and permanent rates). We also find it appropriate to close the current docket once the rate case expenses and temporary-permanent rate recoupment requests are finalized.

In light of the Company's impending full rate case filing in DW 20-187, we find it also appropriate for the issues of the acquisition, financing, and step increase costs associated with Dockham Shores to be examined in the context of that proceeding. That will allow the Commission the opportunity to examine the Company in its entirety, and consider the appropriateness of Dockham Shores' consolidation into Lakes Region's consolidated rate group system. We also find that the decision for Lakes Region to not pursue recovery of the audit costs associated with this docket and Docket No. DW 16-619 appropriate as those costs are not permissible for recovery. *See Pittsfield Aqueduct Company, Inc.*, Order No. 25,076 at 5 (February 24, 2010) ("audit requests [are] a continuing obligation of utilities under RSA 374:18 and [are] recognized in calculating permanent rates per RSA 378:28...[a]llowing expenses

associated with responding to audit requests as a surcharge for rate case expenses would, in effect, amount to a double recovery of these expenses”).

Regarding the contingency of the Settlement Agreement upon approval of the financing in DW 19-135, we find that the contingency has been fulfilled pursuant to Order No. 26,447, which we issue concurrently with this order.

Accordingly, we find the Settlement Agreement just and reasonable and in the public interest and approve it.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement is APPROVED; and it is

FURTHER ORDERED, that the temporary rates will be effective for service-rendered on or after February 10, 2020; and it is

FURTHER ORDERED, that Lakes Region is hereby authorized to begin charging its Consolidated General Service-Metered Customers rates to its Dockham Shores customers with service rendered on and after the date of this order, to be reconciled to temporary rates; and it is

FURTHER ORDERED, that Lakes Region shall promptly file properly annotated tariff pages for permanent rates in compliance with this order no later than 15 days from the issuance date of this order, as required by N.H. Admin. R., Part Puc 1603; and it is

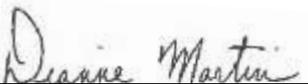
FURTHER ORDERED, that Lakes Region shall file within 30 days of the date of this order, documentation of the difference between temporary rates which went into effect on February 10, 2020, and permanent rates as finally determined herein, and file a proposed surcharge for recovering the difference from customers; and it is

FURTHER ORDERED, that Lakes Region shall file its final rate case expense request pursuant to N.H. Admin. R., Puc 1905.02, no later than 30 days from the date of this order; and it is

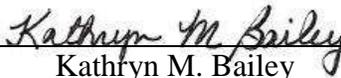
FURTHER ORDERED, that examination of acquisition, financing, and step increase costs, excluding audit costs, associated with Dockham Shores, shall be examined in the context of Lakes Region's rate case, Docket No. DW 20-187; and it is

FURTHER ORDERED, that the current docket shall be closed once Lakes Region's requests for rate case expenses and temporary-permanent reconciliation are resolved.

By order of the Public Utilities Commission of New Hampshire twenty-eighth day of January, 2021.

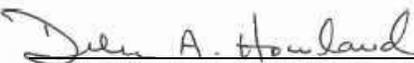


Dianne Martin
Chairwoman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

Service List - Docket Related

Docket#: 19-177

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