

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Lakes Region Water Company, Inc.

Docket No. 20 – 187

ASSENTED TO MOTION FOR CLARIFICATION OF ORDER NO. 26,633

NOW COMES Lakes Region Water Co., Inc., (“Lakes Region”) and requests clarification or reconsideration of Order No. 26,633 as follows:

I. STANDARD FOR CLARIFICATION OR REHEARING

As the New Hampshire Supreme Court explained in *Dumais v. State Personnel Comm’n*, 118 N.H. 309, 311 (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.” *citing Lambert v. State*, 115 N.H. 516 (1975) (quotations omitted). This Motion seeks clarification of the following aspects of the Commission’s Order No. 26,633 which appear to conflict with the provisions of the Settlement Agreement approved by the Commission.

II. REQUEST FOR CLARIFICATION.

A. Clarification of the Step Adjustment.

1. There is Only a Single “Step 1” Adjustment.

Based on Order No. 26,633, it appears that the Commission may misunderstand that there is only one step adjustment which is to occur in this proceeding in which notice has already been given and considerable discovery has already occurred. Order No. 26,633 refers to multiple step adjustments that are not contemplated by the Settlement

Agreement. For example, on Page 1 of Order No. 26,633, the Commission stated that: “The Settlement provides for a proposed permanent rate increase based on a 2019 test year to be followed by two separate step increases that would account for capital projects completed in 2020 and 2021.” The Commission then refers to “step increases” in the plural on Page 1¹ and throughout the Order.

Under the Settlement Agreement negotiated by the parties and approved by the Commission, there is only the permanent rates followed by a single Step I Adjustment. As explained on Page 3 (Overview) of Exhibit 9: “[t]he Settlement Agreement requests that the Commission approve, among other items all detailed below, a permanent rate revenue requirement and a proposed Step I Adjustment (Step I).” The Step I adjustment is “based on three components: (1) the costs of post-test year plant additions placed in service as of December 31, 2020 and 2021; (2) post-test year Annual Wage Expense increases that were deferred pending review in this proceeding, as set forth in Schedules 1 to 5d in Attachment B; (3) and completion of paving work associated with post-test year plant additions estimated to be completed in the second quarter of 2022.” Exhibit 9, Page 6. The Step I adjustment is the only rate adjustment² following the permanent rates established by the Settlement Agreement.

The Settling Parties determined that multiple step adjustments would result in unnecessary administrative burdens and potential customer confusion. The Settling

¹ See Order No. 26,633, Page 1: “However, in accordance with the terms of the Settlement, no change in customer rates will occur until the corresponding proposed step increases are reviewed and approved. The stepped approach is intended to lessen the overall rate impact on customers when new permanent rates (inclusive of the step increases) are approved.” (emphasis added).

² As explained in Section III (A)(2) below, rate recoupment and rate case expense recovery one-time non-recurring credits or surcharges and are not step or rate adjustments under the terms of the Settlement Agreement.

Parties therefore agreed to combine all of the plant and expense adjustments into a single adjustment to occur following approval by the Commission and completion of the repaving project deferred in 2021 for the reasons stated in the Settlement Agreement. This step adjustment retained the name “Step I” but the Settling Parties did not intend there would be multiple step adjustments.

For these and other good reasons, Lakes Region requests that the Commission grant this motion and thereby clarify that there will be only one Step Adjustment.

2. Recovery of Recoupment and Rate Case Expenses

In Order No. 26,633, Page 4, the Commission described a future “Step 2 adjustment” as “review in a subsequent, separate new docket of the recoupment of the difference between temporary and permanent rates and the recovery of combined rate case expenses for each proposed stage (Step 2 adjustment).” In an abundance of caution, Lakes Region requests clarification that rate recoupment and the recovery of rate case expenses are one-time non-recurring credits or surcharges to be determined as a result of this proceeding and not as a permanent rate adjustment in an entirely new proceeding.

The term Step Adjustment is not defined by statute or rule. However, Lakes Region and the Settling Parties reasonably understood the term Step Adjustment to mean an adjustment to permanent rates as a result of the approval of the Settlement Agreement in this proceeding. *See e.g.* Exhibit 9, Page 4.³ This understanding is consistent with

³ Explaining that: “The proposed Step I, however, will result in an increase from the permanent rate revenue requirement, which will result in an increase in rates for all the Company’s customers as shown in Attachments B and C. The Settling Parties recognize that the proposed permanent rate revenue requirement and Step I, if both rates are implemented separately, could result in possible customer confusion stemming from a decrease in rates for a period of months followed by an increase in rates, in the event Step I is approved. As such, the Settling Parties agree and recommend that, instead of implementing the rates on different effective dates, the effective date for both the permanent rate revenue requirement and the Step I rate increase should

prior Commission orders treating step adjustments as adjustments to permanent rates in the same proceeding noticed by the Commission. *See e.g., Liberty Utilities, Order Following Hearing on 2019 Step Adjustment*, Order No. 26,377 (June 30, 2020), Page 11;⁴ *Hampstead Area Water Company, Order Approving Return on Equity and Change in Rates*, Order No. 26,195 (November 28, 2018), Pages 1 – 2.⁵ *Pennichuck East Utility, Order Approving Permanent Rates*, Order No. 26,179 (October 4, 2018).⁶ On information and belief, the Commission has not treated step adjustments as entirely new proceedings which could *in theory* involve or require: (a) new orders of notice to customers under RSA 378:3; (b) a new suspension of rates under RSA 378:6; or (c) new untimely petitions to intervene under RSA 541-A:31 by interested parties who could assert new rights or claims not raised in the proceeding.

Rate recoupment and rate case expense recovery are not permanent rate adjustments. Instead, rate recoupment and rate case expense recovery are one-time credits or surcharges recovered over a finite period of time normally approved at the conclusion of a rate proceeding. *See e.g. RSA 378:29 (rate recoupment)*;⁷ Puc Rule

be realized on the same date. This will aid in maintaining rate stabilization and avoid customer confusion.”

⁴ Explaining that: “While Liberty argued that Staff’s scope of inquiry regarding prudence in this step adjustment phase was limited, Liberty acknowledged that the Commission could review both the selection and execution of the projects for prudence. The Commission must find investments prudent, used, and useful under RSA 378:28 before including a return on those investments in permanent rates. Without such inquiry, the Commission could not make the required finding.”

⁵ Explaining that: “Both the rate increase and the step adjustment were based on a revenue requirement ...”.

⁶ Explaining that: “PEU’s requests for an increase in permanent rates and a step increase are based on the Settling Parties’ proposed new ratemaking methodology.”

⁷ “If, upon final disposition of the issues involved in such proceeding, the rates as finally determined are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would

1903.05 (defining rate case expenses as “those non-recurring expenses incurred by a utility in the preparation or presentation of a full rate case proceeding before the commission, necessary for the conduct of the rate case.”). Unlike a rate adjustment, once the approved amounts are recovered or credited as approved by the Commission, the surcharge or credit expires without the need for further action or adjustment by the Commission.

It is important that the Step I Adjustment, temporary rate recoupment and recovery of rate case expenses occur as part of this proceeding in which notice has been provided, rates have been suspended pending investigation and discovery, and a record developed which supports the temporary and permanent rates, the Step I Adjustment and both rate recoupment and rate case expenses which are expected to offset each other. If an entirely new proceeding were required, it could result in new petitions for intervention by parties who did not intervene or participate in this proceeding when given notice and the opportunity to do so who might seek to assert new rights or claims not raised in this proceeding. This is not to say that the Commission could not assign a new docket number for the remaining phases of this proceeding for administrative purposes. However, such an approach should be considered for all legal purposes, as a continuation of this proceeding in which notice and an opportunity to participate have been provided and a record developed.

For these and other good reasons, Lakes Region requests that the Commission grant this motion and thereby clarify that consideration of the Step I Adjustment, rate recoupment and recovery of rate case expenses, whether in this docket or a new one

have been obtained under the rates finally determined if applied during the period such temporary order was in effect.”

assigned by the Commission for administrative purposes, will occur as a continuation of the record in this proceeding.

B. Clarification that the Meter Replacement Program is for Three Systems

On Page 5 of Order No. 26,633, the Commission stated that: “The Settling Parties agreed that the Company shall commit to installing meters for all of its customers. Until that goal is met, the Settling Parties recommend that the Commission waive Puc 603.03(a), which requires water utilities to bill on the basis of metered volume sales unless a waiver is granted pursuant to Puc 201.05 for unmetered service.” However, Lakes Region requests clarification because it serves unmetered customers in six systems, not just the three unmetered systems that are the focus of the Settlement Agreement.

The Settlement Agreement recognizes that: “Lakes Region services several unmetered customers, as evidenced by their tariffs.”⁸ Lakes Region’s Tariff in turn provides for unmetered service to the following six systems: Tamworth Water Works, 175 Estates, Deer Cove, Lake Ossipee Village, Indian Mound, and Gunstock Glen. See 2nd Revised Page 17. As explained in the testimony of Tom Mason, these systems were constructed by developers without meters⁹ and later acquired by Lakes Region.¹⁰

Under the Settlement Agreement, the Settling Parties agreed that: “the ultimate goal of the Company would be to install meters for all of its customers.”¹¹ However, the Settlement Agreement focused on three systems at this time, Deer Cove, Lake Ossipee

⁸ Exhibit 9, Section III (M), Page 15.

⁹ Exhibit 1, Mason Testimony, Page 10 (“A number of Lakes Region’s systems were constructed without customer water meters, including: 175 Estates, Deer Cove, Lake Ossipee Village, Indian Mound, Gunstock Glen Waterville Gateway and Tamworth Water Works.”) (Waterville Gateway inadvertently listed in testimony as unmetered).

¹⁰ See Exhibit 2 (Exhibits to Mason Testimony), Page 15.

¹¹ Exhibit 9, Section III (M), Page 15

Village, and Indian Mound. Per the Settlement Agreement, Lakes Region commits “to the goal of installing customer meters in its unmetered Deer Cove, Lake Ossipee Village, and Indian Mound divisions before it files for its next rate case.” As noted in the Settlement Agreement, Lakes Region will then submit a report with its next full rate proceeding on the status of meter installations for those three divisions.¹² This report should help inform the Department of Energy and the Commission as to the future meter installations of Lakes Region’s other unmetered divisions.

For these and other good reasons, Lakes Region requests that the Commission grant this motion and thereby clarify that Lakes Region’s metering program under the terms of the Settlement Agreement focuses on three of the six systems in order to phase meter installations over time in order to reduce future rate and technical impacts that could result from meter installation in all six unmetered systems.

III. CONCLUSION

Lakes Region again thanks the Commission for its timely consideration and approval of the Settlement Agreement. The result is a good one. Lakes Region therefore requests limited clarification of Order No. 26,633 for the reasons stated herein. The Department of Energy, furthermore, assents to the relief requested herein.

¹² Exhibit 9, Section III (M), Pages 15 – 16.

Respectfully submitted,

LAKES REGION WATER CO., INC.

By its Counsel,

NH WATER LAW



Dated: June 27, 2022

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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