

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Lakes Region Water company Inc.

Docket Nos. DW 10-141, DW 07-105, DW 10-043, and DW 11-021

OBJECTION TO MOTION TO DESIGNATE STAFF ADVOCATES

The Staff of the New Hampshire Public Utilities Commission (Staff) objects to the Lakes Region Water Company Inc. (LRWC) Motion to Designate Staff Advocates. In support of this objection, Staff states as follows:

1. On November 1, 2011, LRWC filed a motion for designation of Commission Staff as advocates in these proceedings.
2. In support of its motion, LRWC states that staff witness Mark Naylor filed testimony in which Mr. Naylor states that Staff recommends that LRWR seek a qualified buyer and sell its utility assets. LRWC contends that such testimony is reflective of all of the Commission Staff and is highly adversarial and controversial within the meaning of RSA 363:32, I.
3. In its motion, LRWC states that: “rather than evaluate the Company’s financial proposals made in this proceeding, Mr. Naylor testified that ‘Staff recommends that the Company seek a qualified buyer and sell its utility assets’.”
4. In these proceedings, LRWC, Staff, and the other parties to the dockets have participated in settlement discussions and negotiations. The parties alluded to the existence of these discussions in the numerous filings requesting extensions of time to the procedural schedule in LRWC’s rate case, Docket No. DW 10-141. See e.g., LRWC filing of June 13,

2011. To date, the only financial proposals submitted by LRWC have been in the context of settlement discussions.

5. Although the rules of evidence do not apply to hearings before the Commission, the Commission has adopted a long-standing rule of conduct in this State that the content of settlements are not disclosed. See e.g., N.H. Rules of Evidence Rule 408 and Rule 409.

Pursuant to N.H. Code Admin. Rules Puc 203.20:

“[a]ll participants in settlement conferences shall treat discussions at settlement conferences as confidential and shall not disclose the contents of such discussions to third parties or seek to introduce them into evidence.”

LRWC’s disclosure in its motion of the substance of the settlement discussions constitutes a breach of the duty to not disclose and thus constitutes a waiver of the expectation that Staff must not disclose the contents of the discussions.

6. To that end, Staff did consider LRWC’s financial proposals but it could not offer its evaluation of the proposals in its testimony since the proposals were not public. Further, to suggest Staff failed to evaluate financial proposals ‘made in this proceeding’ misrepresents the fact that such proposals were not a part of the company’s rate case filing with the Commission.

7. RSA 365:41 authorizes the Commission to sanction regulated utilities who make false representations to the Commission (*See, America’s Digital Satellite Telephone, Inc.*, Order No. 24,074, 87 NHPUC 716 (2002)) and N.H. Code Admin. Rules Puc 202.08, Obstructing Justice, provides that:

(a) The commission shall refer for prosecution, pursuant to RSA 641:1 and RSA 641:2, any person who:

(1) Testifies falsely to any material matter wherein he has given his oath or affirmation, believing the testimony to be untrue; or

(2) Willfully falsifies any account, book, record, financial statement or other information regarding any material matter, believing the content to be untrue, with

the intent to mislead or deceive any commissioner, presiding officer or staff member.

Additionally, pursuant to RSA 641:3, a person is guilty of a misdemeanor if he or she makes a false statement with the purpose of deceiving a public servant in the performance of his or her official function.

8. During the settlement discussions, LRWC advised Staff that the only course that could be taken to resolve its' financial crisis was to consider financial proposals that included extremely high rate increases and customer-sponsored financing because there were no other options available to LRWC. In attempting to corroborate this statement, Staff learned that in fact there were other options LRWC could consider: two water utilities in New England had contacted LRWC in 2010 and in 2011 and had inquired about purchasing LRWC.

9. During one of the settlement conferences, Staff made clear to LRWC that it had discovered that LRWC had misled Staff as to this material fact. The false information had the effect of artificially limiting Staff's consideration of what would be on balance in the best interest for LRWC and its customers to consideration of only proposals that were beneficial to LRWC.

10. Neither the proceeding nor Staff's position in testimony is so contentious as to create a reasonable concern about Staff's role. Staff's testimony recognizes the fact that LRWC has no access to the capital that is critically needed for it to fulfill its obligations going forward. As a result, Staff proposed the reasonable option of suggesting LRWC pursue a buyer. Staff's recommendation does not deny LRWC its due process before this Commission. The motion to designate Staff as advocates, rather, appears to be nothing more than an attempt to pressure Staff to not pursue sanctions for LRWC having provided false information.

11. LRWC's motion is best characterized as a misrepresentation to cover LRWC providing Staff with false information. For example, LRWC states in paragraph 4 that:

"it appears that Staff has sought to implement its recommendation even before the Company or the Commission has had an opportunity to fully consider the recommendation. Less than one week after Staff's testimony was filed, a technical conference was held on Wednesday October 19, 2011. The following day, Lakes Region Water Company was contacted by the CEO of Aquarion Water Company who indicated that Staff and its legal counsel had put "pressure" on it to purchase Lakes Region Water Company."

Staff absolutely denies that it has solicited water utilities to purchase LRWC. It absolutely denies that it has pressured any utility to purchase LRWC. Staff and its counsel have simply not committed the conduct described in paragraph 4. Again, the allegations merely divert attention away from LRWC having provided Staff with false information.

12. The basis of LRWC's motion is that Staff's conduct, as described in paragraph 4, renders Staff unable to fairly and neutrally advise the Commission on all positions advanced in the proceeding. The conduct Staff is accused of, however, is in dispute. To borrow the standard for motions for summary judgment, there is a genuine issue of material fact concerning the conduct and that conduct forms a necessary basis for LRWC's motion. Accordingly, there are no undisputed facts that demonstrate that Staff is unable to fairly and neutrally advise the Commission. LRWC's motion thus fails.

13. Lastly, LRWC moves to designate as advocates the entirety of Staff's Water Division. The designation of all Staff as advocate would render no Water Division Staff available to advise the Commission. This is an impractical result. LRWC's motion is overly broad because it cannot demonstrate with any undisputed evidence that Mark A. Naylor, James L. Lenihan, Douglas W. Brogan, or Jayson P. Laflamme are unable to fairly and neutrally advise

the Commission or that their position is so contentious as to create a reasonable concern about Staff's role.

WHEREFORE, Staff respectfully states and requests:

- A. The Commission deny LRWC's motion for designation of staff advocate; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted,

Staff of the N.H. Public Utilities Commission

Date: November 10, 2011

By: *Marcia A. B. Thunberg*
Marcia A. B. Thunberg
Staff Attorney

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 Docket Nos. DW 10-141, DW 07-105, DW 10-043, and DW 11-021.

Date: November 10, 2011

By: *Marcia A. B. Thunberg*
Marcia A. B. Thunberg
Staff Attorney