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April 29, 2013

Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DW 13-041 Lakes Region Water Company, Inc.
Emergency Rate Petition
Staff Closing

Dear Ms. Howland:

Lakes Region Water Company, Inc. (Lakes Region) filed a petition requesting emergency rates, pursuant to RSA 378:9, on February 4, 2013. Lakes Region states that it needs emergency rates to pay its 2012 taxes and associated interest and it seeks rate relief in the amount of $173,634 which correlates to a 18.227% rate increase. Lakes Region also states that it intends to file a permanent rate filing in 2013 with a 2012 test year and requests the emergency rates be awarded on a permanent basis, not as temporary rates. Hearings in this matter were held on March 6, 2013 and on March 7, 2013. By agreement of Staff and the parties, closings are due April 29, 2013.

Staff does not believe the Commission should approve LRWC's request. The facts of this case highlight the question: when does a cash flow crisis warrant emergency rates? From a rate-making perspective, Lakes Region's rates are fine. In Staff's opinion, they are better than fine since an analysis of Lakes Region's 2012 operating results show that the company is actually slightly over-earning. Lakes Region agreed that it was over-earning in 2011 and 2012. Hearing Transcript of March 6, 2013 at 76. As such, Lakes Region's difficulties are a cash flow problem, not a rate problem. Since it is a cash flow problem and not a rate problem, the remedy of a rate increase is not going to address the underlying problem. For this reason, Staff does not believe emergency rates are warranted.

Lakes Region's financial troubles are compounded by the fact that its own shareholders are not willing to invest in the company and by the fact that it can't get debt financing. At hearing, Lakes Region agreed that it could not realistically obtain debt financing. See, Hearing Transcript of March 6, 2013 at 122. Because those two avenues of cash are no longer available, Lakes Region is turning to customers to bolster its cash flow. This is not appropriate in light of Lakes Region over-earning. Even if the Commission were to approve emergency rates, we heard at hearing from Lakes Region's witness that the proceeds from these rates are not going to come in soon enough to pay the tax liability.

Staff also does not believe emergency rates are warranted because Lakes Region has not provided any evidence that it was required by law to amend its tax returns and therefore exhaust its loss carry forwards. This is a critical part of the analysis because it appears Lakes Region deliberately sped up the exhaustion of those carry forwards in order to make a case in Docket No. DW 10-141 that it was entitled to receive income taxes in its rates. Lakes Region argued in Docket No. DW 10-141 that those taxes ought to be included in its revenue requirement and it made the same argument in its request for rehearing. The Commission denied both requests and now Lakes Region has essentially made a third request for inclusion of those tax expenses in its revenue requirement by filing an emergency rate petition.

Staff does not believe emergency rates are warranted because Lakes Region issued what is essentially a dividend to its shareholder at a time when the company is in deep financial trouble and cannot access the capital markets for financing. At hearing, Lakes Region described the payment to its shareholder as a "return of capital." They ended in September of 2012. Whether termed a 'dividend' or a 'return of capital', Staff considers such a distribution as highly inappropriate. Lakes Region is in a cash flow crisis and has large outstanding payables and corporations in such predicaments simply do not issue dividends or other distributions.

Staff also does not support Lakes Region's emergency rates because Lakes Region's cash flow problems do not rise to the level of an emergency. These problems, discussed at length at hearing, are not appropriately solved by asking for a ratepayer bailout. Rather, Lakes Region needs to step forward and demonstrate it can access the financing it needs. Lakes Region earned a very solid rate of return in both 2011 and 2012 which is clear evidence that current rates are appropriate and adequate. That Lakes Region is cash-starved is not the problem of customers. If the shareholder is unwilling or unable to adequately capitalize this utility, it needs to be transferred to owners who have the ability and willingness to do so.

Lakes Region argues in its petition that it is in the same situation as PSNH and in that case, emergency rates were warranted. Staff agrees that it may be difficult for Lakes Region to pay for construction under way or in the future, but that is not a rate issue; it is a cash flow issue. As we've heard in testimony, Lakes Region does not have access to debt financing or equity.

Staff would like to further distinguish Lakes Region's additional argument that its situation is similar to the 1948 New England Telephone case wherein the utility was awarded rates to stop the continuing operating losses. At hearing, Lakes Region testified that emergency rates would help "stop the losses." Hearing Transcript of March 6, 2013 at 12. Lakes Region, however, is over-earning; it is not suffering operating losses. Furthermore, the proposed emergency rate increase is not going to stop operating losses; it is more akin to a bridge loan from customers.

This Commission is obligated to make decisions that represent an appropriate balancing of the interests between shareholders and customers. By that measure Staff does not believe that the evidence supports granting Lakes Region's request. Lakes Region is slightly over-earning from the revenue requirement the Commission authorized in its last rate case yet it is still facing financial difficulties. If an emergency rate increase were approved, it would exacerbate Lakes Region's over-earning. Lakes Region has been issuing shareholder dividends. Its shareholder is either unwilling or unable to inject equity into the company and Lakes Region cannot secure debt financing. Additionally, if emergency rates were approved, revenues from that rate increase would not be received in time to satisfy the tax payments. For the foregoing reasons, Staff respectfully requests the Commission deny Lakes Region's request for emergency rates.

Sincerely,

Marcia A Brown

Marcia A. Brown
Staff Attorney

cc: Docket-related service list