

**DW 04-090**

**LAKES REGION WATER COMPANY, INC.  
INDIAN MOUND WATER CORPORATION INC.**

**Petition for Authority to Purchase and Sell Certain Assets and  
Transfer of Franchise Rights**

**Order *Nisi* Approving Purchase and Sale of Assets and Transfer of Franchise Rights  
Subject to Certain Conditions**

**ORDER NO. 24,374**

**September 23, 2004**

**I. PROCEDURAL HISTORY AND BACKGROUND**

On May 21, 2004, Lakes Region Water Company, Inc. (Lakes Region) and Indian Mound Water Corporation (Indian Mound) filed with the Commission a Joint Petition for Authority to Purchase and Sell Certain Assets and Transfer of Franchise Rights (Joint Petition). Lakes Region and Indian Mound are both public utilities regulated by the New Hampshire Public Utilities Commission (Commission) pursuant to RSA 362:2 and RSA 362:4. Indian Mound operates a small water system and serves approximately 80 customers in a limited area of the town of Ossipee. Lakes Region operates a number of water systems and serves approximately 1,100 customers located in certain portions of the towns of Moultonboro, Thornton, Laconia, Gilford, Campton, Conway, North Conway, Tamworth and Tuftonboro, New Hampshire.

The Joint Petitioners request the Commission: 1) authorize Lakes Region to purchase the Indian Mound water system and the rights to provide water in the franchise area of Ossipee pursuant to New Hampshire RSA 374:22 and 26; and 2) authorize Indian Mound to discontinue permanently its water service to said area pursuant to RSA 374:28. Lakes Region proposes to serve Indian Mound customers in accordance with Indian Mound's currently effective tariff, including authorization to charge Indian Mound customers the existing annual

rate of \$283.68 as approved by Commission Order No. 22,203 (June 18, 1996).

In support of the Petition, Lakes Region states that it seeks to acquire the Indian Mound system so that it can offer all of its customers, including Indian Mound, the advantages of greater economies of scale. Lakes Region further states it possesses the requisite technical, financial and managerial capabilities to own and operate the system. (*See* Joint Petition at paragraphs 4, 5, 7, 8, and 10). The Joint Petitioners attached to their Petition a letter dated May 15, 2002 from the New Hampshire Department of Environmental Services (NHDES) which stated the Indian Mound water system satisfied the requirements of RSA 374:22, III relating to basic suitability and availability of drinking water.

The Joint Petitioners also attached to their Petition a purchase and sale agreement executed on March 3, 2004. According to the terms, Indian Mound would sell to Lakes Region the Indian Mound water system and franchise rights in Ossipee for \$30,000, subject to approval of the Commission.

On September 7, 2004, the NHDES filed a second letter with the Commission indicating the Indian Mound public water system met the requirements of RSA 374:22, III regarding suitability and availability and further that NHDES supported the sale of Indian Mound to Lakes Region. Commission Staff (Staff) expressed conditional support, in a letter filed with the Commission on September 21, 2004. Staff attached copies of two sets of data responses received from the Joint Petitioners which included an August 13, 2004 letter from Lakes Region stating: "Indian Mound's customers receive non-metered service. Lakes Region has no immediate plans to install meters. As such, Lakes Region respectfully requests a waiver

of Puc 1203.05.”

Staff recommended the Commission approve the sale and transfer of the assets and franchise rights of Indian Mound to Lakes Region. Lakes Region owns and operates a number of water systems in the state, and the Commission has found Lakes Region to possess the managerial, financial and technical capabilities to operate public utilities. Staff stated Lakes Region intends to install an additional well and to increase the size of the main transmission line in the system. Further, after some months of operating the system, Lakes Region plans to request a change in customer rates. Finally, Lakes Region is unsure at this time whether it will request inclusion of Indian Mound in the single rate tariff it currently has in effect for most of its systems.

Staff alerted the Commission that Lakes Region had indicated in discovery that it intends to finance the acquisition of Indian Mound through a loan from the Bank of New Hampshire, however, Lakes Region did not request approval for financing in the Joint Petition. To address this oversight, Staff recommended the Commission approve the instant Petition but defer approval of any financing request to a future proceeding once an appropriate filing is made.

With respect to Lakes Region’s request to continue providing unmetered service and waiver of Puc 603.03, Staff recommended the Commission deny the request. Staff stated Lakes Region has not met the requirements of Puc 201.05(d) since it has not provided a basis for the request. Staff stated the significant emphasis on water conservation in recent years in New Hampshire necessitated Lakes Region contemplating metered service. Staff believed that, absent compelling reasons for use of flat rates, all water utility service should be provided on a metered

basis. Staff recommended the Commission order Lakes Region to file a meter installation plan.

With respect to the purchase price, Staff stated that purchase price is slightly in excess of the net book value of the assets to be acquired. Staff recommended that, if the purchase price still exceeds the net book value of the assets on the date of the closing of the transaction, the Commission should order Lakes Region to book an acquisition adjustment so that the excess amount paid is not reflected in future customer rates. Staff stated this approach would be consistent with the recognized regulatory treatment of assets. According to Staff, customers should not be expected to provide a return to an investor-owned utility on any amounts in excess of original cost.

Lastly, Staff informed the Commission that Indian Mound ceded control of the operation of the system to Lakes Region prior to Commission approval of the transfer. Staff was concerned about customer notification, liability, unauthorized charging of rates, and unauthorized operation of a water utility franchise. Rather than deny the Petition, however, Staff recommended the Commission approve the Petition but strongly caution Lakes Region that the assumption of control of any utility, without Commission approval, is contrary to statute and must not be repeated.

On September 21, 2004, Lakes Region filed a letter with the Commission requesting Staff reconsider its position stated in an August 26, 2004 letter regarding metering. Lakes Region indicated that, as a small water utility, it had limited resources available for use in the Indian Mound system and preferred to dedicate those resources to improving the supply and transmission infrastructure of the Indian Mound system at this time. Lakes Region stated it

would not oppose metering the system at some future point.

## II. COMMISSION ANALYSIS

The transfer of water utility assets and franchises is governed by RSA 374:22 and RSA 374:30. Pursuant to RSA 374:22, I “[n]o person or business entity shall commence business as a public utility within this state...without first having obtained the permission and approval of the commission.” The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is in the public good. *See* RSA 374:26. In determining whether a franchise is in the public good, the Commission assesses the managerial, technical, financial, and legal expertise of the Petitioner. *See Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000). Pursuant to RSA 374:30, “[a]ny public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system...when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.” *See* RSA 374:30. We apply these authorities to the case at hand.

We have reviewed the Petition, Staff’s recommendation, and other filings in this docket and will grant the Petition, with conditions.

The Commission has supported Lakes Region’s acquisition of community water systems in the past and thus we are generally familiar with how Lakes Region operates as a

public utility.<sup>1</sup> In assessing whether Lakes Region possesses the managerial, technical, financial, and legal expertise to acquire and operate the Indian Mound system, we note the NHDES letter in support of Lakes Region acquiring Indian Mound. NHDES confirmed Indian Mound's water system meets the suitability and availability requirements of RSA 374:22, III. Staff also recommends the Commission approve the transfer of Indian Mound to Lakes Region. We recognize, as Staff does, that the Petition was deficient on information such as how Lakes Region would pay for the transfer, why a waiver was necessary, and how asset value should be booked. We do not, however, consider those problems to be disqualifying because they do not relate directly to Lakes Region's ability to provide safe and adequate water service as required by RSA 374:1. Therefore, we find Lakes Region possesses the requisite technical, managerial and financial capability to own and operate the Indian Mound water system.

With respect to installation of water meters at the Indian Mound system, we agree with Staff that Lakes Region has offered no compelling reasons in support of the waiver request. For this reason, we will reject Lakes Region's waiver request. Accordingly, we will require Lakes Region to submit to the Commission a plan for installing meters and a metered rate within 60 days from the date of this order. Our decision is consistent with Commission Order No. 22,203 (June 18, 1996) wherein Indian Mound was ordered to meter its systems. *See Integrated Water Systems, Inc.* 81 NH PUC 475, 479 (1996). We temporarily allowed Indian Mound Water

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<sup>1</sup> In DR 98-112, Order No. 23,146 (February 11, 1999), the Commission approved Lakes Region's petition to consolidate certain water systems into a single tariff and approved a general rate increase. In DF 96-249, Order No. 22,320 (September 17, 1996), the Commission approved Lakes Region's petition to issue stock. In DE 95-271, Order No. 22,304 (September 4, 1996), the Commission appointed Lakes Region as operating agent for Beebe River Water System. In DE 94-187, Order No. 21,475 (December 22, 1994), the Commission approved Lakes Region's petition to purchase Brake Hill Acres Water System.

Corporation to maintain a flat rate design in 1998 while Indian Mound completed its exemption request. The temporary allowance of a flat rate, however, predated the legislature's mandate that the Commission and NHDES review and implement water conservation measures. For these reasons, we believe we must adhere to conservation measures, such as metered service, and deny Lakes Region's waiver request as filed.

We will, however, approve Lakes Region's request to impose the present Tariff rates even though we recognize that Tariff contains flat rates rather than metered service. According to Lakes Region's data response 1-5, it plans to operate the system for a few months and then file for an increase in rates for Indian Mound. Our requirement that Lakes Region file a metering plan will likely coincide with Lakes Region filing for new rates and we anticipate taking up the issue of rate design and metered rates in more depth in that future filing.

With respect to Lakes Region's need to finance the purchase of Indian Mound, we will adopt Staff's recommended course of action. Staff recommended Lakes Region make a separate filing for financing approval if Lakes Region intends to borrow funds to acquire Indian Mound. It appears Lakes Region agrees with this course of action since in response to Staff data requests 1-1 and 1-5, Lakes Region contemplates needing to file for financing approval in the near future. We also note that the purchase and sale agreement appended to the Petition contemplates a closing occurring within 30 days from Commission approval. Accordingly, we find it reasonable that if Lakes Region needs financing in order to acquire Indian Mound, it file for and obtain Commission approval prior to the closing.

According to the Petition, Lakes Region has been operating the water system, paying all operating costs, and has been collecting revenues since April 1, 2004. Staff's recommendation letter confirmed that Lakes Region had assumed operation of Indian Mound in advance of Commission approval. While we sympathize with the need to transfer a water system to an entity that can make capital investments, transfers must comply with RSA 374:30. The Commission must first make its determination that the transfer is in the public good. If we had found the transfer of Indian Mound to Lakes Region not to be in the public good, Lakes Region would, at a minimum, have been required to return revenues it had collected to Indian Mound and Lakes Region would have run the risk of not recovering the cost of any capital investments or operating expenses. Such a result could have placed Lakes Region in a financially perilous condition.

With respect to the issue of booked assets, Staff has articulated the Commission's longstanding practice of not allowing utilities to recover from ratepayers amounts in excess of original cost. We will therefore require Lakes Region to book any amount of the purchase price that exceeds the net book value of the assets at the time of the closing as an acquisition adjustment so that it is not reflected in future customer rates.

Based on the foregoing information, we find that Lakes Region possesses the requisite managerial, technical, financial expertise and legal ability to operate a water utility. We further find the proposed transfer of the Indian Mound water system and its associated franchise rights to Lakes Region Water Company, Inc. to be in the public good.



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

**ORDERED *NISI***, that pursuant to RSA 374:22,I and RSA 374:30, the proposed transfer of the Indian Mound water system, upon the terms and conditions indicated in the Joint Petition and sales Agreement, and subject to the terms and conditions specified in this Order, is APPROVED; and it is

**FURTHER ORDERED**, that, pursuant to RSA 374:22,I and RSA 374:30, Indian Mound Water Corporation is authorized to sell and Lakes Region Water Company, Inc. is authorized to purchase the Indian Mound system and associated franchise rights; and it is

**FURTHER ORDERED**, that, upon completion of the sales transaction and after the property records of the system have been transferred, Lakes Region Water Company, Inc. will consult with the Commission Staff regarding the appropriate accounting entry for this transaction with specific attention paid to the Utility Plant Acquisition Adjustment in order that its books and records will properly reflect the purchase of these assets in accordance with Section 610.01(e)(4) of the NH PUC Uniform System of Accounts for Water Utilities; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc. request for a waiver of Puc 603.03 is DENIED and that Lakes Region shall submit a plan for metering the Indian Mound system within 60 days from the date of this Order; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc. file for financing approval to fund its purchase of Indian Mound no later than 30 days from the date of this order; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc. will operate the system in accordance with the Tariff currently in effect in the franchise areas, including the rate schedules in effect pursuant to the Commission's Order No. 22,203 (June 18, 1996); and it is

**FURTHER ORDERED**, that the Petitioner shall cause a copy of this Order *Nisi* to be mailed to the Town Clerk in Ossipee and be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such mailing and publication to take place no later than October 4, 2004 and to be documented by affidavit filed with this office on or before October 25, 2004; and it is

**FURTHER ORDERED**, that Lakes Region Water Company, Inc. shall consult the Commission's Consumer Affairs Division and develop an appropriate announcement to be in the form of a bill insert which will inform customers of the new ownership, that the existing tariff rates and charges remain in effect, and will include but not be limited to any other pertinent billing information such as billing address if such information has changed; and it is

**FURTHER ORDERED**, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than October 11, 2004; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than October 18, 2004; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective October 25, 2004, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

**FURTHER ORDERED**, that the Petitioner shall file a compliance tariff with the Commission on or before October 25, 2004, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 2004.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary