

DW 04-031

**LAKES REGION WATER COMPANY, INC.
LOV WATER COMPANY AND DEER COVE WATER COMPANY**

**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. 24,376

September 30, 2004

I. PROCEDURAL HISTORY AND BACKGROUND

On May 17, 2004, Lakes Region Water Company, Inc. (Lakes Region) of Moultonborough, N. H., LOV Water Company (LOV) of West Ossipee, N. H. and Deer Cove Water Company (Deer Cove) of West Ossipee, N. H., all New Hampshire corporations, filed a Joint Petition pursuant to RSA 374: 22,26 and 28 for authority to purchase and sell certain assets and transfer franchise rights from LOV and Deer Cove to Lakes Region. Lakes Region provides water to a total of 1,148 customers located in limited areas of the Towns of Moultonboro, Thornton, Laconia, Gilford, Campton, Conway, North Conway, Tamworth, Tuftonboro and Wolfeboro. LOV provides water service to 215 customers in a limited area of the Town of Freedom. Deer Cove provides water service to 51 customers in a limited area of the Town of Ossipee.

In the Joint Petition, Lakes Region has agreed to purchase, and LOV and Deer Cove have agreed to sell, the LOV system and the Deer Cove system (together referred to as the “systems”) and the respective franchise rights in Freedom and Ossipee. The terms and conditions of the purchase and sale of the systems are set forth in separate agreements, dated February 9,

2004, and attached to the Joint Petition and identified as Exhibits “A” (between Lakes Region and LOV) and “B” (between Lakes Region and Deer Cove).

In addition to the purchase and sale of the water system assets, Lakes Region has agreed to purchase and Lake Ossipee Village, Inc. (Lake Ossipee) has agreed to sell approximately 3.3 acres known as Lot 58 (Lot 58) located in the Town of Freedom. Lot 58 contains a pump house, pumping equipment and other equipment, which LOV has leased from Lake Ossipee. The purchase and sale agreement for Lot 58 is attached to the Petition and identified as Exhibit “C”.

The agreed upon purchase price for the LOV system is \$70,000 (paragraph 2 of Exhibit “A” to the Petition) and the purchase price for the Deer Cove system is \$10,000 (paragraph 2 of Exhibit “B”). Lakes Region also will pay Lake Ossipee \$44,800 for Lot 58 and the associated facilities in Freedom.

Lakes Region states that it intends initially to operate the systems in accordance with the tariffs currently in effect in the franchise areas. For LOV, the rate schedules currently in effect are pursuant to the Commission’s Order No. 20,554 (July 31, 1992) in Docket DE 89-033. That Order approved an annual rate of \$137.92 for LOV. Commission Order No. 20,327 (December 6, 1991) in Docket DE 90-016 approved an annual rate of \$233.00 for Deer Cove.

Lakes Region states that it seeks to acquire the two water systems along with Lot 58 so that it can offer all its customers including LOV and Deer Cove the advantages of greater economies of scale. Further, the Petitioners asserted that Lakes Region possesses the requisite technical, managerial and financial capability to own and operate the systems. (*See* Joint Petition at paragraph 13).

On September 7, 2004, the New Hampshire Department of Environmental Services (DES) filed a letter with the Commission stating, in accordance with RSA 374:22, III, that the operation of the LOV and Deer Cove systems as public utilities satisfies the requirements of DES concerning the basic suitability and availability of drinking water.

On September 27, 2004, Staff filed a letter recommending approval of the petition. Staff notes that Lakes Region operates a number of water systems in central and northern New Hampshire and has the managerial, financial, and technical capabilities to operate public utilities in the state. Staff points out that the proposed purchase of Lot 58 by Lakes Region is necessary because it is the site for certain equipment integral to the operation of the LOV system. Up until this time, LOV did not own all of the assets used in the water system and this fact had been noted in previous Commission orders.

Staff alerted the Commission that Lakes Region had indicated it intended to finance the acquisition of both LOV and Deer Cove through a loan from the Bank of New Hampshire. However, the Joint Petition did not contain a specific request for financing approval. Staff believes the Commission can approve the purchase and transfer of the LOV and Deer Cove systems and consider a financing petition when one is filed by Lakes Region.

Staff also points out in its letter that Lakes Region intends to continue providing unmetered service in both systems. Staff recommends that the Commission order Lakes Region to undertake a plan for metering both systems in the near future. Staff also states that with a significant emphasis on water conservation in recent years in New Hampshire, and absent a compelling reason for providing water sales on a flat-rate basis, Lakes Region should provide service on a metered basis. Thus, Staff recommends that Lakes Region file a metering plan.

Staff's letter also raises an issue with respect to the Deer Cove acquisition. Staff indicates that the two wells in the Deer Cove system are located on conservation land owned by a Deer Cove North Corporation (DCNC), the ownership of which is related to the owner of Deer Cove. DCNC charges Deer Cove an annual fee of \$1,000 for the right to use and maintain the wells, and this charge will continue and be the responsibility of Lakes Region. Staff expressed concern about the possibility of this fee being arbitrarily increased at any time, and recommended that the Commission order Lakes Region to pursue negotiations with DCNC for a long-term arrangement. Staff averred that such an arrangement would be to ensure continued access to the wells along with a predictable cost for that right of access.

In addition to the above, the Staff letter informs the Commission that both LOV and Deer Cove ceded control of both systems to Lakes Region as of the date the Purchase and Sale Agreements were executed. Staff stated that relinquishment of control by an owner prior to Commission authorization creates a host of concerns such as customer notification, liability, authorization for the continued charging of rates, etc. 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 prior to Commission approval is contrary to statute.

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, 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 any 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 previously approved Lakes Region’s acquisition of community water systems and is familiar with its operations as a public utility.¹ Lakes Region also filed a letter with the Commission on September 7, 2004, from DES, confirming that the two water systems meet the suitability and availability requirements of DES as per RSA 374:22 III. In addition, Staff also recommends the Commission approve the transfer of LOV and Deer Cove to Lakes Region. We therefore find that Lakes Region possesses the requisite technical, managerial and financial capability to own and operate the LOV and Deer Cove water systems.

¹ In DW 04-090, Order No. 24,374 (September 23, 2004), the Commission approved Lakes Region’s acquisition of the water system assets of Indian Mound Water Corporation. 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.

A second item to address concerns the installation of water meters at the LOV and Deer Cove systems. To date, no requests for a waiver of the requirements set forth in Puc 603.03(a) have been submitted by Lakes Region to continue to provide water service on a non-metered basis. It is Staff's recommendation that Lakes Region submit a plan for metering the LOV and Deer Cove systems, and we will adopt that recommendation. As we pointed out in our recent order regarding Lakes Region's acquisition of Indian Mound (Order No. 24,374, issued September 23, 2004) we recognize a legislative mandate that the Commission and DES review and implement water conservation measures. Metered service is among the most critical of such measures. Therefore, we will require Lakes to submit a plan to install meters, such plan to be filed no later than six months from the effective date of this Order.

Another issue for our consideration is Lakes Region's intent to operate the systems in accordance with the tariffs currently in effect in the franchise areas, including the rate schedules in effect pursuant to this Commission's Orders No. 20,327 and 20,554. We acknowledge that intent on the part of Lakes Region and further make our approval of the proposed transaction contingent upon it. We acknowledge as well Lakes Region's intent to review its operation of the two systems after some reasonable period, with an eye to filing for new rates. We will take up the issue of a metered rate at that time, once the plan for metering has been submitted.

With respect to Lakes Region's need to finance the purchase of the two systems, we will adopt Staff's recommended course of action. Staff recommended that Lakes Region make a separate filing for financing approval if it intends to borrow funds to acquire LOV and Deer Cove. Accordingly, we find it reasonable that if Lakes Region needs financing to acquire

LOV and Deer Cove, it file for and obtain Commission approval prior to the closing.

According to the Petition, Lakes Region's Purchase and Sale Agreements with both LOV and Deer Cove called for Lakes Region to assume all responsibility for operating both systems as of the date both Agreements were executed. In addition, the Agreements called on Lakes Region to install corrosion control equipment in both systems. Staff indicated that Lakes Region has indeed installed that equipment at both systems. While we recognize the benefit of transferring water systems to an entity that can make capital improvements, 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 either or both transfers not to be in the public good, Lakes Region could have been significantly impacted financially.

Although it does not appear that our specific approval for the purchase of Lot 58 is necessary, we recognize the need for Lakes Region to purchase this property from a related party to the owner of LOV. By virtue of the ownership of utility plant used in supplying water to the public pursuant to RSA 362:2, Lakes Ossipee Village, Inc. could arguably be considered a public utility and subject to our jurisdiction. Lakes Region's acquisition of the plant and property from Lake Ossipee, however, will render this issue moot.

In its letter, Staff expresses concern that the arrangement with Deer Cove North Corporation for access to the wells at the Deer Cove system could be modified to the detriment of Lakes Region and its customers. Specifically, Staff is concerned with an arbitrary increase in the \$1,000 annual fee for access to the wells on property of DCNC. Staff recommends we order Lakes Region to seek a long-term arrangement in order to assure continued access to the wells at a reasonable fee. We believe Staff's recommendation is sound and we will order Lakes Region

to pursue negotiations with DCNC for this purpose. We also note from review of the data responses attached to Staff's September 27, 2004 letter that one deed in the chain of title to DCNC's ownership of the land involved remains outstanding (response 1-17, missing deed from Birch Hill Recreational Area, Inc. to DCNC). The Petitioners indicate that if the relevant deed "cannot be found, then a new one will be produced." We will direct the Petitioners to file a copy of an appropriately recorded deed within 90 days of the effective date of this order.

Based on the foregoing information, we find that Lakes Region possesses the requisite managerial, financial, and technical expertise and legal ability to operate a water utility. We further find the proposed transfer of the LOV and Deer Cove systems and their 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 LOV and Deer Cove water systems, upon the terms and conditions indicated in the Joint Petition and Sales Agreements, 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, LOV Water Company and Deer Cove Water Company are authorized to sell and Lakes Region Water Company, Inc. is authorized to purchase the LOV and Deer Cove systems and associated franchise rights; 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 Lakes Region Water Company submit to this Commission a plan for metering the LOV and Deer Cove water systems no later than six months from the effective date of this Order; and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc. will operate the systems in accordance with the Tariff currently in effect in each franchise area, including the rate schedules in effect pursuant to the Commission's Orders No. 20,327 and 20,554 and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc. pursue negotiations with Deer Cove North Corporation in order to seek a long-term arrangement for access to the use of the wells which provide the water supply for the Deer Cove system, and provide a report to this Commission on these efforts no later than 90 days from the effective date of this Order; and it is

FURTHER ORDERED, that the Petitioners file a copy of a deed from Birch Hill Recreational Area, Inc. to Deer Cove North Corporation within 90 days of the effective date of this order; and it is

FURTHER ORDERED, that the Petitioners shall cause a copy of this Order Nisi to be mailed to the Town Clerks in Freedom and Ossipee as well as to each customer served in the LOV and Deer Cove systems as well as have a summary of this Order Nisi as provided by the Executive Director published once in a statewide newspaper of general circulation in those portions of the state where operations are conducted; such mailing and publication to take place no later than October 11, 2004 and to be documented by affidavit filed with this office on or

before October 25, 2004; 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 18, 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 25, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective November 1, 2004, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc. shall file a compliance tariff for each system with the Commission on or before November 1, 2004, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary

DW 04-031

**LAKES REGION WATER COMPANY, INC.
LOV WATER COMPANY AND DEER COVE WATER COMPANY**

**Summary of Order Nisi Approving
Petition for Authority to Purchase Water Systems
Issued September 30, 2004**

On May 17, 2004 Lakes Region Water Company, Inc. (Lakes Region), LOV Water Company (LOV) and Deer Cove Water Company (Deer Cove) filed a petition with the New Hampshire Public Utilities Commission (Commission) for authority to purchase and sell certain assets and franchise rights from LOV and Deer Cove to Lakes Region.

In addition to the purchase of the two water utilities as described, Lakes Region also proposes to purchase real estate containing a pump house, pumping equipment and other equipment, which LOV has leased from Lake Ossipee Village, Inc.

The agreements between Lakes Region and LOV and Deer Cove call for Lakes Region to pay \$70,000 for the LOV system and \$10,000 for the Deer Cove system. The purchase price for Lot 58 is \$44,800. Lakes Region assumed operational responsibilities for both systems at the time the purchase and sale agreements were executed on February 9, 2004. Part of Lakes Region's obligation under the agreements was to install corrosion control equipment at both systems, and it has done so. Lakes Region has indicated to the Commission that, for the time being and until it has sufficient operating experience with both systems, it intends to operate both systems under their existing tariffs. Current rates at LOV are \$137.92 annually, and at Deer Cove are \$233.00.

On September 7, 2004 Staff of the Commission (Staff) filed a letter with the Commission expressing its support for the transfer of the systems to Lakes Region.

Staff also expressed its opinion that the associated purchase of Lot 58, is necessary and resolves a concern that LOV did not own all of the assets it used to provide water service. Staff's letter pointed out that Lakes Region indicated an intention to borrow funds to acquire the two systems, but had not yet provided a petition to so request that authority. Staff also pointed out Lakes Region's stated intention to continue to provide unmetered service in the two systems. Staff recommended that, due to continuing emphasis on conservation in New Hampshire, the Commission order Lakes Region to provide a plan for metering the two systems within a reasonable time period.

Staff's letter also expressed concern with a certain fee payable to Deer Cove North Corporation (DCNC), a related party to the current owner of Deer Cove. A fee of \$1,000 annually must be paid to continue access to the system's wells located on property of DCNC. Staff recommended the Commission order Lakes Region to seek negotiations for a long-term arrangement, in order to assure access to the wells as well as certainty of the cost of the fee. Finally, Staff's letter points out that the water supplies at both LOV and Deer Cove meet Department of Environmental Services availability and suitability requirements.

In its decision, the Commission finds that Lakes Region Water Company, Inc. has the managerial, financial and technical capabilities as well as the legal expertise to own and operate public utilities, and thus approves the petition. The Commission has ordered Lakes Region to provide a plan within 6 months from the effective date of its order for metering both systems. The Commission further indicated that it accepted Lakes Region's stated intent to operate both systems under their current tariffs, and indicated that the issue of a metered rate would be addressed at a future time. The Commission acknowledged Lakes Region's desire to

finance the purchase of the two systems, and indicated that it would entertain Lakes Region's request upon receipt of a filing for that approval. The Commission expressed its concern that Lakes Region has assumed control of both systems prior to receiving Commission approval, pointing out that if the Commission had not approved the purchases, Lakes Region could be negatively impacted financially.

The Commission also addressed Lakes Region's proposed purchase of Lot 58 at the LOV system. The Commission expressed its opinion that the acquisition of the land and associated assets from Lake Ossipee Village, Inc. rendered the issue of possible jurisdiction over that previously unregulated entity moot.

The Commission accepted Staff's recommendation that Lakes Region be ordered to enter into negotiations with DCNC as to its access to the wells on DCNC's property. Finally, the Commission noted a missing deed in the chain of title with respect to DCNC's property, as revealed in discovery responses attached to Staff's letter, and directed the petitioners to file a copy of an appropriately recorded deed within 90 days of the effective date of the order approving the petition.

Since the Commission's order has been issued on a *nisi* basis, it provides that any party who wishes to comment on the petition of Lakes Region to acquire the two water systems, or who wishes to request a hearing on the matter, may do so by submitting a request to the Commission in writing by October 25, 2004.

A copy of the Commission's entire order may be viewed on the Commission's website at www.puc.nh.gov or may be obtained from Lakes Region Water Company by calling 603-476-2348.