

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 07-105, DW 10-043, DW 10-141, DW 11-021

LAKES REGION WATER COMPANY, INC.

**Investigation into Quality of Service, Affiliate Agreement with LRW Water Services, Inc.,
Permanent Rate Proceeding, and Petition to Approve Long-Term Debt**

Order Denying Motion for Rehearing Filed By Lakes Region Water Company, Inc.

ORDER NO. 25,408

September 6, 2012

I. PROCEDURAL BACKGROUND

In this order, we address the motion for rehearing of *Lakes Region Water Company, Inc.*, Order No. 25,391 (July 13, 2012), styled as a “Motion for Rehearing or Clarification” and timely filed by Lakes Region Water Company, Inc. (Lakes Region) pursuant to RSA 541:3 and N.H. Code Admin. Rules Puc 203.33 on August 8, 2012. On August 14, 2012, Non-Advocate Commission Staff filed a request, pursuant to N.H. Code Admin. Rules Puc 201.05, for a Commission waiver of the filing deadline for objections to the motion for rehearing established by N.H. Code Admin. Rules Puc 203.07(f). The Commission granted this waiver request by secretarial letter dated August 14, 2012, extending the deadline for the filing of objections to Lakes Region’s motion for rehearing to August 20, 2012. Non-Advocate Commission Staff and Advocate Staff filed timely objections to the motion for rehearing on August 16, 2012. (Order No. 25,391 contains a detailed procedural and issue history of the docket that is not repeated here except as appropriate to explain our rulings).

II. LAKES REGION MOTION FOR REHEARING

A. Motion for Rehearing and Response to Staff Objections

In its motion for rehearing, Lakes Region reiterates its argument, presented within its rate case filings and at hearing, in favor of inclusion of an adjustment of \$68,732 to its revenue requirement to accommodate expected state and federal income taxes. According to Lakes Region, this adjustment was necessitated by revised income tax filings made by Lakes Region during the pendency of its instant rate case. Lakes Region asserts that these income tax revisions, in turn, were made in response to Staff witness Jayson Laflamme's recommended disallowance of certain pension- and health-insurance expenses incurred by Lakes Region during the 2007-2009 period. *See* Lakes Region Motion for Rehearing at 3-6.

Lakes Region argues that the position of Staff witness Laflamme regarding additional income tax liability, *i.e.*, that any additional income tax liability associated with Staff's adjustment would be absorbed by Lakes Region's sizeable operating loss carryforwards, could be countered by evidence unavailable at hearing, including revised tax filings. Also, Lakes Region asserts that the Commission had failed to rule on whether it accepted or rejected Lakes Region's request for the \$68,732 tax adjustment. Lakes Region states that Commission rehearing on this issue is therefore appropriate because (i) the Commission "overlooked this issue and did not rule on it," and (ii) new evidence, specifically, prior-year amended tax returns, could be made available to the Commission in making a determination regarding possible inclusion of this adjustment in Lakes Region's revenue requirement.

(On August 22, 2012, Lakes Region filed a response to Staff's objections to its motion for rehearing, discussed below, in which Lakes Region defends its positions outlined in the motion for rehearing, and expresses its disagreement with Staff's arguments against granting the motion).

B. Objections to Motion for Rehearing

1. Non-Advocate Staff

In its objection to Lakes Region's motion for rehearing, Non-Advocate Staff opposes Lakes Region's assertion that the Commission failed to rule on Lakes Region's request for the \$68,732 in tax-related adjustment to the revenue requirement, pointing out that the Commission clearly adopted, with certain limited exceptions, Staff witness Jayson Laflamme's revenue requirement recommendations. Non-Advocate Staff thereby asserts that the Commission's ruled on this issue and there are no grounds for rehearing. Also, Non-Advocate Staff, on the basis of established ratemaking practice, argues against retroactive inclusion of a prospective tax liability, in the form of the Lakes Region-requested \$68,732 adjustment, into a revenue requirement for the 2009 test year.

2. Advocate Staff

In its objection to Lakes Region's motion for rehearing, Advocate Staff expresses its support for Non-Advocate Staff's grounds for objection. Advocate Staff also states its lack of confidence in Lakes Region's prior period adjustments to retained earnings, as governed by the Uniform System of Accounts for Water Utilities, due to Lakes Region not having received Commission approval for those prior period adjustments. Advocate Staff also recommends that

the Commission disallow Lakes Region's recovery of costs associated with its motion for rehearing, as imprudently incurred, and related to unapproved prior period adjustments.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n* 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003), *Comcast Phone of New Hampshire*, Order No. 24,958 (April 21, 2009) at 6-7 and *Public Service Company of New Hampshire*, Order No. 25,168 (November 12, 2010) at 10.

First, we reject Lakes Region's assertion that the Commission did not rule in Order No. 25,391 on Lakes Region's request for an adjustment to provide for state and federal income taxes that Lakes Region asserts it will incur going forward. In accepting the rate and revenue requirement recommendations of Staff witness Jayson Laflamme, with certain limited exceptions delineated in Order No. 25,391, we rejected the inclusion of an adjustment of \$68,732 for Lakes Region's purported prospective tax liability arising from pension-related, or other, adjustments to past tax filings by Lakes Region. Furthermore, the revenue requirement calculations presented in Appendix A, and adopted by the Commission, do not include the \$68,732 adjustment figure.

We direct Lakes Region to the language in Order No. 25,391, as pointed out by Staff in their objections, in which we incorporated the proposals of Mr. Laflamme into our approved revenue requirement calculations (*see, e.g.*, “Having reviewed Lakes Region’s original permanent rate filing, testimony filed by the parties in this case, and the overall record in this case, we believe that, with certain modifications, the rate recommendations prepared by Mr. Laflamme of Non-Advocate Staff offer the best means of providing just and reasonable rate relief to Lakes Region at this time.” Order No. 25,391 at 14; *see also* “The revenue requirement, as amended by the Step Increase, and our own adjustments to Mr. Laflamme’s proposal...” Order No. 25,391 at 17).

To the extent that our ruling is not clear to Lakes Region, we offer the following additional explanation of our ruling on this point. It is a well-established principle of ratemaking that the revenue requirement established for a given test year covers expenses incurred during that test year. In the instant rate case, Lakes Region’s test year was 2009. Lakes Region purports to have incurred an additional prospective tax liability of exactly \$68,732, resulting from recent (unapproved) adjustments to past tax-year retained earnings, which, Lakes Region asserts, should be retroactively incorporated into Lakes Region’s revenue requirement for the test year 2009. Instead, we rule in accordance with past ratemaking practice, that this future tax liability, if supported by the evidence, should be recovered as part of a Commission-approved revenue requirement for a more current test year as part of a future rate case filing by Lakes Region. If Lakes Region finds the filing of a new rate case to be advisable at present, in light of its financial condition, it may file such a rate case incorporating into its revenue requirement

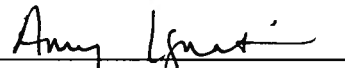
more recently-incurred expenses, including tax expenses. Such a rate case filing may be especially advisable in light of Lakes Region's planned integration of the Mt. Roberts well field property into Lakes Region's rate base, as referenced by Lakes Region in its motion for rehearing. (See Lakes Region Motion for Rehearing, Point 8, at 4).

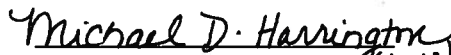
With regards to Advocate Staff's request that recovery of all expenses associated with the filing of Lakes Region's instant motion for rehearing be denied, we will consider such expenses in connection with Lakes Region's filing of rate case expenses with the Commission, as required by the terms of Order No. 25,391.

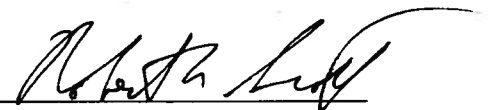
Based upon the foregoing, it is hereby

ORDERED, that the motion for rehearing filed by Lakes Region is DENIED.

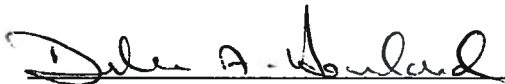
By order of the Public Utilities Commission of New Hampshire this sixth day of September, 2012.


Amy E. Ignatius
Chairman


Michael D. Harrington (1013)
Commissioner


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director