

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 14-285

LAKES REGION WATER COMPANY, INC.

Petition for Authority to Issue Long Term Debt

Order *Nisi* Approving Long Term Debt

ORDER NO. 25,753

January 13, 2015

In this order *nisi*, the Commission approves a petition of Lakes Region Water Company, Inc. (LRWC), to issue long-term debt in the form of five loans, the proceeds of which funded or will fund capital investments used by LRWC in service to customers. Specifically, the Commission finds the terms and uses of the debt to be reasonable, prudent, and consistent with the public good. Because LRWC failed to seek prior approval for four of the five loans, we establish a mechanism that, if triggered by a future instance of unauthorized long-term debt, will result in an automatic penalty of \$1,000.

I. BACKGROUND

LRWC is a public water utility, as defined by RSA 362:2 and RSA 362:4, which provides service to customers in 17 community-water systems in central and northern New Hampshire. On October 14, 2014, LRWC filed a petition seeking permission to incur a total of \$290,250 in long-term debt under RSA ch. 369, which governs the issuance of securities by public utilities. The testimony of consultant, Stephen P. St. Cyr, accompanied LRWC's petition.

On November 21 and December 23, 2014, Commission Staff filed letters summarizing its findings and recommendations for Commission action. On January 2, 2015, LRWC filed a letter concurring with the recommendations in Staff's December 23, 2014, recommendation letter.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested or granted by the Commission, are posted to the Commission's website at <http://www.puc.state.nh.us/Regulatory/Docketbk/2014/14-285.html>.

II. LRWC'S LOANS

A. CoBank Loan

LRWC's petition describes five long-term loans (*i.e.*, for periods in excess of 12 months). One, in the amount of \$129,775 from CoBank, will be used to finance improvements to LRWC's Indian Mound system in Ossipee, New Hampshire.¹ That project includes replacing aging and deteriorating infrastructure, which is negatively affecting service to LRWC's customers. The terms of the CoBank loan include an interest rate of 5.5% and a term of 15 years. LRWC executed a Master Loan Agreement in its last financing proceeding, DW 13-335. As LRWC explained in that matter.

CoBank is a Government Sponsored Enterprise ("GSE") owned by its customers, who consist of water utilities, agricultural cooperatives, rural energy and communication organizations and other businesses that serve rural America. As a GSE, CoBank issues its debt securities with the implicit full faith and credit of the US Government and uses these low cost funds to make loans to companies that meet its charter requirements. As a result of the implicit backing of the US Government, CoBank's borrowing costs are lower than commercial banks and financial institutions and these lower costs are passed on to its borrowers. In addition to the lower rates, Co Bank loans generally have fewer covenants or restrictions as compared to loans from commercial banks and other financial institutions.

Direct Testimony of Timothy Fontaine, November 25, 2013, DW 13-336, at 3, line 19, to 4, line 6.

¹ The CoBank loan is only part of the funding for the Indian Mound project, with the remaining funds being provided out of cash on hand. *See* Staff Supplemental Recommendation dated December 23, 2014, at 1.

B. Vehicle Loans

The other four loans covered by LRWC's petition financed the purchase of vehicles in 2013 and 2014. Those purchases were made without Commission approval. Specifically, in 2013, the Company financed two new Ford trucks, in the amounts of \$36,918 and \$26,536. Both vehicles were financed through the Ford Motor Credit Company over a five-year term at an interest rate of 5.95%. The Company stated in this proceeding that those vehicles were needed to replace older models and to ensure the Company's ability to service all of its water systems.

In 2014, the Company purchased a Caterpillar Excavator for \$65,250, financing it through an installment-sales contract with Southworth-Milton, Inc. The terms of that contract include an interest rate of 0.72% and a payment term of five years. Also at that time, the Company purchased a 2014, Ford F-150 truck at a price of \$31,771. The loan on the F-150 requires payments over a five-year term at an interest rate of 6.24%.

III. STAFF RECOMMENDATION

As indicated above, Staff filed two recommendation letters. In its November 21, 2014, letter, Staff recommended approval of the five loans. Staff concluded that the financings are consistent with the public good, and that the uses of the financings are reasonable because they are consistent with the company's duty to provide reasonably safe and adequate service to its customers in accordance with RSA 374:1. Staff further concluded that the terms of the financings are reasonable, falling within the range of terms that the Commission has recently approved with regard to other long-term debt financings.

In its November 21, 2014, letter, Staff also recommended that we impose a conditional sanction on LRWC, a suspended penalty of \$1,000, for its failure to seek prior Commission approval for the four vehicle loans. In support of its suspended penalty recommendation, Staff

noted that this is not the first time LRWC has failed to seek prior approval for long-term debt. *See Lakes Region Water Company, Inc.*, Order No. 25,391 (July 13, 2012), at 21 (Commission "admonish[ed] Lakes Region to seek advance approval of future loan undertakings, as required by RSA 369 in docket D W 11-021, consolidated with dockets DW 07-105, DW 10-043 and DW 10-141).

In its December 23, 2014, letter, instead of the suspended penalty, Staff recommended that we accept LRWC's admission of a violation of RSA ch. 369 and establish an automatic-penalty mechanism that LRWC would trigger if it violated RSA ch. 369 again. Although not spelled out explicitly, we understand from Staff's recommendation and Lakes Regions' response that the difference between the suspended penalty and the automatic penalty mechanism recommendations is that the suspended penalty is an actual penalty upon issuance of the Commission's order in this case, while the automatic penalty mechanism creates a way for a future, actual penalty to be imposed by the Commission if LRWC violates RSA ch. 369 again.

Staff's second letter also clarified the total cost and sources of funds for the Indian Mound Project, as well as LRWC's commitments to future compliance with RSA ch. 369. Specifically, Staff described LRWC's plans to implement policies and practices to manage future vehicle replacements and any necessary, associated financing. As noted above, LRWC filed a letter indicating its concurrence with Staff's December 23 letter.

IV. COMMISSION ANALYSIS

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this state may issue evidence of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." Analysis of the public good consideration involves looking beyond actual terms of the proposed financing to

the use of the proceeds of those funds and the effect on rates to insure the public good is protected. *See Appeal of Easton*, 125 N.H. 205, 211 (1984). As we have previously noted, “certain financing related circumstances are routine, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing.” *In re PSNH*, Order No. 25,050, 94 NH PUC 691, 699 (2009). We review LRWC’s petition as a routine financing.

LRWC seeks to borrow up to a total of \$129,775 from CoBank to finance various improvement projects within its Indian Mound system, to provide safe and adequate service to its customers. Staff specifically reviewed the projects to be financed by the CoBank loan and concluded that they were reasonable, prudent, and consistent with the public good. The expected terms of the CoBank loan are recommended by Staff as just and reasonable.

LRWC also seeks after-the-fact approval of four vehicle loans it entered into 2013 and 2014 without Commission approval. The four vehicle loans total \$160,475, and LRWC used the proceeds of these loans with Ford Motor Credit Co. and Southworth-Milton, Inc., to purchase equipment needed to provide water service to the public. Although it took issue with LRWC’s failure to obtain prior approval under RSA ch. 369, Staff supported the reasonableness and appropriateness of the terms and uses of the vehicle loans.

In response to the post-hoc nature of LRWC’s vehicle-loan approval requests, and based on prior Commission warnings to LRWC about unauthorized long-term debt, Staff suggested that we sanction LRWC. Initially, the recommended sanction consisted of a suspended penalty, effective upon issuance of a Commission’s order in this case but levied only upon LRWC’s subsequent violation of RSA ch. 369. Instead, after consultation with LRWC, Staff

recommended a future, automatic penalty mechanism which could be used by the Commission in the future to impose a penalty if LRWC violates RSA ch. 369 again. LRWC, which admits to a violation, supports the automatic penalty alternative.

Based on Staff's review and LRWC's concurrence with Staff's December 23, 2014, recommendation, we approve LRWC's petition. The terms of the proposed financings as well as LRWC's use, and intended use, of the funds are appropriate and reflect prudent utility management in service to customers. Accordingly, the financings are consistent with the public good, and we approve the five LRWC loans as proposed. To effectuate the CoBank loan, we also provide our approval for the security interest in LRWC's equity interest in CoBank. Our approval of the petition is conditioned on the final terms not being substantially different from those proposed in LRWC's filing. If any terms vary significantly, we will require LRWC to seek additional Commission approval.

We also approve the automatic penalty mechanism recommended by Staff and supported by LRWC to address the violations of RSA ch. 369. Accordingly, for a period of five years from the effective date of this order, any future long-term financing for vehicles or equipment undertaken by LRWC without approval from the Commission shall result in an automatic penalty of \$1,000 per financing. This penalty shall be paid by the Company within 30 days of a request by Staff to the Commission and shall be payable even if the Company requests a hearing on Staff's request or otherwise challenges the Staff's demand for payment or the Commission's enforcement of this automatic penalty. As recommended by Staff and supported by LRWC, the automatic penalty shall not preclude any other enforcement action by Staff and the Commission as authorized by law.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, authority to undertake the financings proposed by LRWC on the terms and conditions proposed in its petition, is hereby APPROVED; and it is

FURTHER ORDERED, that an automatic penalty of \$1,000 shall be imposed upon and paid by LRWC within 30 days of a request by Staff to the Commission to impose such a penalty, if LRWC violates RSA ch. 369 again; and it is

FURTHER ORDERED, that LRWC shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than January 23, 2015, and to be documented by affidavit filed with this office on or before February 11, 2015; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than February 2, 2015, for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 9, 2015; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 13, 2015, unless LRWC fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of
January, 2015.



Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director