

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 19-135

LAKES REGION WATER COMPANY INC.

Petition for Approval of Financing

Order *Nisi* Approving Financing

ORDER NO. 26,447

January 28, 2021

This order authorizes Lakes Region Water Company to borrow \$633,000 from CoBank to purchase assets required to provide water service. This order is being issued on a *nisi* basis to ensure that interested persons receive notice and have the opportunity to comment or request a hearing before the order becomes effective.

I. PROCEDURAL HISTORY

Lakes Region Water Company Inc. (Lakes Region or the Company), is a water utility that serves approximately 1,800 customers in eleven New Hampshire communities located in the Lakes Region and White Mountains regions of New Hampshire. The majority of those customers are seasonal, although this varies by system, with Dockham Shores and Wildwood customers being predominantly year-round customers.

On August 16, 2019, Lakes Region filed a petition seeking authority to borrow up to \$633,000 from CoBank in order to finance four projects: 1) the Dockham Shores system pump station replacement, 2) the Wildwood system pump station replacement, 3) a Paradise Shore system water main replacement at Paradise Shore Road, and 4) a Paradise Shore system water main replacement at Robin Lane. The Company supplemented the petition with pre-filed testimony and financial schedules.

Over a period of 20 months, Commission Staff (Staff) issued five sets of data requests, and engaged the services of engineering consultant Douglas W. Brogan, P.E. Mr. Brogan submitted a final report to Staff on July 14, 2020. On August 14, 2020, Staff recommended that the financing be approved, subject to a future prudency review prior to any approval for rate recovery.

On August 26, 2020, Lakes Region filed a response to the Staff recommendation which included a request for seventeen findings of fact. On October 1, 2020, Lakes Region updated its response to Staff DR 3-20, which served as a basis for, and was attached to, Staff's August 14, 2020, recommendation.

On October 5, 2020, Staff supplemented its recommendation. The Company's petition and subsequent docket filings, other than any information for which confidential treatment has been requested of, or granted by, the Commission are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-135.html>.

II. POSITION OF LAKES REGION WATER COMPANY AND RECOMMENDATION OF STAFF

A. Lakes Region Water Company

Lakes Region filed a petition for approval of a \$633,000 loan from CoBank at a fixed interest rate over a twenty-year term to finance four projects (the Projects): Dockham Shores pump station replacement \$215,000; Wildwood pump station replacement, \$260,000; Paradise Shore Road water main replacement, \$92,000; and Robin Lane water main replacement, \$66,000.

The Company proposed obtaining two secured loans in the amounts of \$433,000 and \$200,000 at an estimated interest rate of 4.75 percent. At the conclusion of the discovery period,

the Company stated it did not expect the interest rates to exceed 5.5 percent and proposed that the Commission approve rates not to exceed 6 percent. Lakes Region estimated that the financing will reduce the Company's weighted average cost of capital from 8.69 percent to 8.24 percent. Lakes Region further estimated that it will incur charges of \$8,000 to procure the loans, consisting of \$4,000 in loan origination costs and \$4,000 in accounting fees. The Company expected the closing could occur within 30 to 45 days following the issuance of a Commission order approving the financing.

The Company did not apply for low interest rate state financing through the Drinking Water State Revolving Fund (DWSRF) or the Drinking Water and Groundwater Trust Fund (DWGTF) administered by the New Hampshire Department of Environmental Services (NHDES). The Company opined that because of NHDES' method for prioritizing financing applications for awarding funds, and the location and seasonality of its customers, NHDES likely would have assigned a low priority to Lakes Region's request. The Company concluded it was unlikely that Lakes Region would have received financing approval. In addition, the Company was concerned that even if approved by NHDES, Davis-Bacon wage requirements would have increased the Company's financing costs. Lakes Region also pointed out that its current relationship with CoBank requires it to comply with terms and conditions related to previous CoBank loan documents, and a DWSRF or DWGTF loan would require the Company to hire additional staff resources and additional coordination to meet a second set of financial covenants and security obligations.

Lakes Region described the projects at issue as follows: The Dockham Shores pump station was replaced in 2018 at a total cost of \$274,906. The capital costs for the replacement

pump station included a new building, generator, pumps and storage tank. The Dockham Shores system served 61 customers in Gilford and was largely paid for with internal Company funds.

The Wildwood Pump Station will serve 49 customers in Albany and is anticipated to cost \$260,000. The pump station currently in place is aging and seems to have been installed approximately forty years ago. A 2018 Asset Checkup Report rated the probability of failure as “high” for the Wildwood building, storage tank, and treatment equipment. The consequence of failure was rated “major” and “catastrophic” for the Wildwood storage tank and treatment equipment, respectively. The Company noted that its Wildwood customers experience high iron and low pressure and that a new pump station “will provide constant pressure, adequate iron removal, larger well storage, and a backup generator.” Pre-filed Testimony of Thomas A. Mason at 3. The proposed Wildwood pump station is expected to be essentially a duplicate of the Dockham Shores system pump station. Lakes Region Response to Staff 1-12, Attachment B. (Staff Recommendation at Bates 59-65).

The Company proposed two water main replacements in the Paradise Shore system, which serves 414 customers in Moultonborough. The Paradise Shore Road water main project will include installation of 1,000 feet of 8-inch main and will increase the flow of water service to the system. The Robin Lane water main project will replace 850 feet of 4-inch water main, and will include three 4-inch gate valves. This will reduce water loss (from leaks) and require less maintenance. *Id.*

On August 26, 2020, Lakes Region filed a response to Staff’s Recommendation. The Company concurred with Staff’s “conclusion that the proposed ‘use of funds is appropriate and the financing is consistent with the public good and should be authorized pursuant to RSAs 369:1 and 4.’” However, the Company objected to Staff’s conclusion that Staff had not

done a prudence review, and it rejected Staff's conclusion that Staff's review applied to the reasonableness, and not the prudence, of the Projects. *See* Company Response to Staff Recommendation (August 26, 2020) at 1. Instead, the Company asked the Commission to find that the review conducted by Staff in this docket supports a finding that "the projects are a prudent use of the proposed long-term debt and consistent with good utility practice and the public good." The Company asserted that a determination that the proposed financing is consistent with the public good "by necessity" includes "a determination that a utility's decision to finance one or more projects is prudent and reasonable under the circumstances." *Id.* at 1.

B. Commission Staff

For Dockham Shores, Staff concluded that the "as constructed" cost of the pump station is in line with that of similar pump stations in New Hampshire. Staff concluded that the new pump station seemed well built, reliable, appropriately sized, and likely to eliminate equipment failures, water shortages, outages and other problems associated with the old system. Based on the Company's representations, Staff concluded that the cost of the proposed Wildwood pump station is essentially the same as the replacement costs of the Dockham Shores system, and also in line with that of similar pump stations in New Hampshire. Staff noted customer complaints about the Wildwood system failures, including inadequate water pressure, water shortages and conditions related to the water itself, including taste, odor, color, and the propensity for staining fabric when used for laundering. Review of the proposed main replacement projects also appeared reasonable to Staff. Overall, Staff concluded that, from the standpoint of the various system upgrade needs addressed, all four projects appeared reasonable.

In its review of the financing, Staff noted the position that the financing is in the best interests of Lakes Region and its customers, because the projects will increase the systems' reliability.

With regard to the two proposed CoBank secured loans, Staff agreed that, had the Company sought DWSRF or DWGTF loans from NHDES, Davis-Bacon Act wage requirements would increase the Company's costs and require additional staff recourses and coordination. Staff noted that Lakes Region reported it investigated other financing options with the Bank of New Hampshire, but that the terms offered by CoBank were more favorable. Staff pointed out that the Company modified its initial position that a rate increase was essential to allow the Company to recover its investment in the Dockham Shores pump station and to make payments on the loans at issue in this financing docket. Staff also noted that the Company "has the necessary financial resources to service the debt" pending any potential rate increase. Staff Recommendation at 5.

Lakes Region's current capital structure is approximately 25 percent debt and 75 percent equity. In Staff's view, the proposed financing would result in a capital structure of 36 percent debt and 64 percent equity. With Lakes Region's capital structure less weighted towards the more costly equity financing and more in favor of less costly debt financing, Staff anticipates the Company's overall cost of capital will be lower, which is more favorable to ratepayers.

Under the Company's existing rate structure, the impact of the financing would increase the current stand-alone revenue requirements of Dockham Shores by 40.73 percent and Wildwood by 94.23 percent. Staff acknowledged that the Company's financing request would have a significant impact on the stand-alone revenue requirements of the Dockham Shores and Wildwood systems. However, in Staff's view, increased revenue requirements of this nature

may be required for small systems for necessary and reasonable infrastructure improvements, particularly where catastrophic failure and poor water quality are at issue. Staff considered Lakes Region's position that if the Company were to request inclusion of both the Dockham Shores and Wildwood systems in a consolidated rate, and if the Commission were to approve such a request, the impact of the financing would result in a 3.59% increase to Lakes Region's consolidated revenue requirement.

Staff concluded that the improvements appear to be made in the ordinary course of the Company's operations, pursuant to its duty to provide safe, adequate, and reliable water service to its customers under RSA 374:1, subject to a future prudency review prior to any approval for rate recovery. Staff did not recommend additional process was necessary before the Commission could issue an order on this financing request.

III COMMISSION ANALYSIS

RSA 369:1 states that a utility "may, with the approval of the commission but not otherwise, issue and sell...notes and other evidence of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes." The Commission after such "hearing or investigation as it may deem proper," shall authorize the financing "if in its judgment the issue of such securities upon the terms proposed is consistent with the public good."

RSA 369:4. The Commission reviews the amount to be financed, the reasonableness of the terms and conditions, the proposed use of the proceeds, and the effect on rates. *Appeal of Easton*, 125 N.H. 205, 211 (1984).

The rigor of an *Easton* inquiry varies depending on the circumstances of the request. We engage in a more limited review for routine financing requests. *Hampstead Area Water Company, Inc.*, Order No. 26,381 at 9 (July 21, 2020). A routine request is one that will have no

discernible impact on rates or deleterious effect on capitalization, and in which the funds are to enable numerous investments appropriate in the ordinary course of utility operations. *Id.* (quotations and citations omitted). A routine request calls for a more limited examination of whether the “use of financing proceeds is in the public good without further review of possible alternative uses of the funds.” *Id.* (quotations and citations omitted). At the other end of the spectrum, some financing requests may call for vastly greater exploration of the intended uses and impacts of the proposed financing. *Public Service Company of New Hampshire*, Order No. 25,050 at 14 (December 8, 2009).

The goal of a financing review is to ensure that customers are not “affected injuriously” by a capitalization so high that the utility “will not be able to give its consumers at reasonable rates the service to which they are entitled. . . .” *Appeal of Conservation Law Foundation* 127 N.H. 606, 615 (1986), *quoting Appeal of Seacoast Anti-pollution League*, 125 N.H. 708, 718 (1984). The Commission conducted an extensive investigation into this financing, including significant discovery related to whether the projects that are the subject of this financing are in the public interest. *See* RSA 369:4. The Staff Recommendation and the Staff Consultant’s report are detailed and comprehensive. *See* RSA 365:19. We conclude that investigation is sufficient to allow us to assess the financing and determine that the financing is in the public good.

The extensive record in this docket supports our conclusion that the CoBank Loan provides financing for the projects at favorable rates resulting in a reduced cost to customers. Although the financing would have a significant impact on the stand-alone revenue requirements of the Dockham Shores and Wildwood systems were the Company to pursue recovery in that framework, the Company has filed a general rate case seeking a consolidation of rates among its

various systems. *See* Docket No. DW 20-187 Lakes Region Water Company, Request for Change in Rates, Petition (November 30, 2020).

In our view, the proposed projects appear to be appropriate from the standpoint of the Company's ability to maintain safe, adequate, and reliable water service. The proposed improvements also appear to be investments made in the ordinary course of the Company's operations. Based on the above, the Commission concludes that the financing is consistent with the public good and should be authorized pursuant to RSA 369:1 and :4.

We make no finding here, express or implied, that the Company acted prudently or otherwise regarding the projects to be financed, or that the projects have been implemented in a prudent manner. Nor are we required to make such findings when authorizing a financing. *See* RSA 369:4 (requiring Commission to find the actual or probable costs to be incurred and that the loan with the terms proposed is consistent with the public good); *see also, Easton*, 125 N.H. at 209-212 (where intervenors asked the Court to find that the scope of review required the Commission to state whether the object of the desired funding was prudent and the Court did not so rule). An *Easton* review of a proposed financing is distinct from, and in no way equivalent to, the sort of prudence review that is only possible when reviewing actual expenditures. We find that Staff correctly observed that Staff "has not done a prudence review," and that the review conducted by Staff's consultant Mr. Brogan "applied to the reasonableness, and not the prudence, of the Projects."

Finally, the Commission's investigation disclosed sufficient facts, as set forth above, to support the required findings pursuant to RSA 369:4. Accordingly, we need not address Lakes Region's proposed findings of fact. *See* RSA 365:19.

We issue our decision on a *nisi* basis to provide interested persons the opportunity to submit comments or request a hearing. Our approval of Lakes Region's financing does not limit or preclude the Commission from reviewing in a future rate case, directly or indirectly, the prudence, use, and usefulness of any specific project financed by the loan. RSA 378:28. The Commission and Staff also retain the authority under RSA 374:4 to be kept informed of Lakes Region's use of the financing independently and apart from any review under RSA 378:28.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, authority for Lakes Region Water Company to undertake a loan of \$633,000 under the terms and conditions described in this order, and for the purposes as outlined herein, is hereby GRANTED; and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc. shall cause a copy of this order *nisi* to be published on its website within one business day of this order, such publication to be documented by affidavit filed with the Commission on or before February 10, 2021; and it is

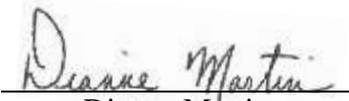
FURTHER ORDERED, that the Executive Director of the Commission shall cause a copy of this order *nisi* to be published on the Commission's website within one business day; and it is

FURTHER ORDERED, that persons interested in responding to this order 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 5, 2021, for the Commission's considerations; and it is

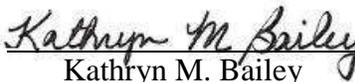
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 10, 2021; and it is

FURTHER ORDERED, that this order shall be effective February 12, 2021, unless Lakes Region Water Company fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

By order of the Public Utilities Commission of New Hampshire twenty-eighth day of January, 2021.

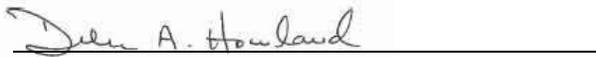


Dianne Martin
Chairwoman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

Service List - Docket Related

Docket#: 19-135

Printed: 1/27/2021

Email Addresses

ExecutiveDirector@puc.nh.gov
douglas.brogan@gmail.com
robyn.descoteau@puc.nh.gov
steve.frink@puc.nh.gov
david.goyette@puc.nh.gov
jayson.laflamme@puc.nh.gov
anthony.leone@puc.nh.gov
amanda.noonan@puc.nh.gov
ocalitigation@oca.nh.gov
justin@nhwaterlaw.com
Mary.Schwarzer@puc.nh.gov
Christopher.tuomala@puc.nh.gov
leah@Lakesregionwater.com