

DW 99-119

LOV WATER COMPANY

Deficiencies and Appropriateness of Fines

Order Nisi Altering Order No. 23,502 and Extending Suspension
of Fines

O R D E R N O. 23,728

June 14, 2001

APPEARANCES: Devine, Millimet & Branch, by Fred Coolbroth, Esq. for LOV Water Company; and Lynmarie Cusack, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. INTRODUCTION AND BACKGROUND

On June 5, 2000 the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,502 in which LOV Water Company (Company) was ordered to pay a fine of \$7,300 with \$4,300 of the fine to be held in abeyance for one year from the date of the order. The Commission imposed the fine after finding that the Company failed to comply with Order No. 23,371 which required the Company to install a pump station by a certain date and file weekly reports with the Commission regarding the progress of the pump station. A portion of the fine was suspended as long as the Company continued to abide by outstanding Commission orders and provide safe and reliable service to its customers.

On May 18, 2001, Douglas Brogan, the Commission Staff's (Staff) Water Engineer, filed a memorandum (Staff

memo) with the Commission, copying the Company, which addressed the status of several outstanding issues in this docket. The two major topics discussed are the Engineering study and Lake Ossipee Village, Inc. The Staff memo reported that the Company submitted an Engineering Study, as required by Order No. 23,371 on September 27,2000, but that the Study does not adequately address a significant number of issues highlighted in earlier orders and correspondence. With regard to the resolution of the system ownership issues with Lake Ossipee Village, Inc., the Staff memo expressed concern with the Company's lack of progress in resolving this matter.

The Company replied to the Staff memo by letter dated May 25, 2001 (Company letter). The Company expressed complete surprise about the issues raised in the Staff memo. The Company stated that Lewis Companies submitted their Engineering Study eight months ago (report dated September 26, 2000) and had suggested Mr. Brogan contact Mr. Sands with any questions regarding the Study. The Company argues that Staff's failure to raise any questions during the eight month period since they issued the report calls into question the timeliness of the concerns expressed therein, and that the Company should not be faced with an extension of their fine suspension.

The Staff memo recommends that the Commission order the Company to: file Forms E-14 and E-18 monthly; file line item listings of all system repairs and/or improvements completed quarterly (until altered or rescinded by Commission); provide copies of pump station logs from all three stations from June 2000 through May 2001, by June 30, 2001; and provide, by September 20, 2001, copies of pump station logs from all three stations from June 2001 through at least September 4, 2001 and copies of any and all notices sent to customers between date of the Brogan memo and the date of the revised study. Moreover, it was recommended that the Company submit, by October 30, 2001, a revised study addressing each of the issues raised in the Staff memo, incorporating the summer demands of the three major holiday weekends. The Staff memo also recommended an extension of the fine abeyance through December 5, 2001. Lastly, the Staff memo argued that if there is a lack of substantial progress from the Company toward the resolution of the Lake Ossipee Village, Inc. issue by October 30, 2001, the Commission should initiate a show cause hearing or other appropriate action.

II. COMMISSION ANALYSIS

After a review of the Staff memo and the Company letter we are convinced that an extension of the suspension of

fines should be granted. The suggestion to extend the suspension period for an additional six months until December, 2001 is reasonable in light of the circumstances of this case.

In Order No. 23,543 we observed "had the Company been proactive in taking care of its business it might not have found itself facing fines." We believe that the Company's response of attacking Staff for the Company's failure to address the deficiency of the Engineering Study only highlights the problem with this Company. The Staff memo is replete with statements that demonstrate how the Company did not properly convey system problems to the Engineering firm completing the required study. For example, Mr. Brogan states,

Lewis Companies would have no way of knowing of the existence of many of these issues unless communicated by LOV. In this respect, the Company's apparent failure to communicate in a sufficiently clear or meaningful way and to provide adequate information and direction, in spite of various admonitions by Staff and the Commission, is a poor and continuing commentary on the Company's genuine level of interest in probing into or rectifying any real system needs.

Given the issues raised by the Staff memo, we consider it appropriate to extend the period of suspension on the fines for an additional six months. We will adopt the

Staff memo recommendations for filing extended reports until this requirement is altered or rescinded by the Commission. The remainder of the recommendations are adopted in full. Because of the hearing requirements of RSA 365:28, we issue this order on a NISI basis to afford any interested party the opportunity for a hearing.

Based upon the foregoing, it is hereby

ORDERED NISI, that Order No. 23,502 be amended to extend the suspension of fines of \$4,300 for a period of six months from the date of this order; and it is

FURTHER ORDERED, that the Company is directed to meet the remainder of the requirements of the Staff memo as discussed above; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy 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 June 21, 2001 and to be documented by affidavit filed with this office on or before June 28, 2001; 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 July 2, 2001; and
it is

FURTHER ORDERED, that any party interested in
responding to such comments or request for hearing shall do so
no later than July 9, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be
effective July 16, 2001, unless 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 fourteenth day of June, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary