

DW 99-119

LOV WATER COMPANY

**Hearing on Deficiencies and the Appropriateness of Fines,
Penalties and/or Revocation of Franchise**

Order Approving Settlement and Requiring Engineering Study

O R D E R N O. 23,371

December 20, 1999

Appearances: David Sands and James Shannon, Esq. for LOV Water Company; Lynmarie Cusack, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

In 1998 and 1999 the Commission Staff (Staff) received several customer calls regarding the quality of service provided by LOV Water Company (the Company). As a result of these calls and several customer letters dated in May, 1999, Staff met with Mr. David Sands, Company President, on June 1, 1999. On June 22, 1999, Staff toured the system and met with two customers.

As a result of the tour and other investigation including pressure recordings taken at customer premises, Staff's Water Engineer, Douglas Brogan, noted significant quality of service deficiencies relating to pressure, water quality, air, system operation and engineering. Staff notified the Company President in writing of its findings, recommendations and action deadlines. Staff requested that the Company, among other things, provide a written response to Staff regarding remedial alternatives for system improvements. This response was due no later than August 2, 1999.

The Staff letter concluded that any significant failure to comply with the letter would result in a recommendation for a show cause hearing on these issues as well as on the appropriateness of fines, penalties and receivership.

Only after further inquiry by Staff did the Company respond to Mr. Brogan's letter. The Company response dated August 6, 1999 prompted a memorandum from Mr. Brogan to the Commissioners recommending a hearing be held. During the consideration of the issue by the Commission the Company failed to take action on many of the remedial measures recommended by Staff.

The Commission issued Order No. 23,288 on August 23, 1999 ordering the Company to show cause as to why fines or penalties should not be imposed and scheduling a show cause hearing for September 13, 1999. The order also provided a deadline for intervention. The Office of Consumer Advocate (OCA), did not appear. No other party intervened, although several customers attended the September 13th hearing.

At the hearing, Staff presented the testimony of Mr. Brogan. Thereafter, the Company conducted a lengthy cross-examination of Mr. Brogan, but had insufficient time thereafter to present its case. As a result, the Commission scheduled a second day of hearings for September 28, 1999.

Prior to the commencement of the September 28, 1999 hearing, the Company approached the Staff attorney to discuss

settlement. The hearing was opened but closed immediately so that Staff and the Company could negotiate settlement. A settlement was reached later that afternoon and presented orally to the Commissioners that same day.

II. POSITION OF THE PARTIES

A. STAFF

Staff raised concerns regarding the low quality of service, the Company's unresponsiveness to its customers, and its unresponsiveness to Staff. Specifically, Staff believed the deficiencies in the system were not being properly addressed by the Company. Staff noted problems regarding the extremely low pressure on Hillside Drive, the highest point in the system, where customers would have showers interrupted midstream, toilets could not be flushed and appliances could not be filled in a normal cycle time.¹ Staff asserted that the system pressures failed to comply with even the bare minimums required by applicable rules. See Transcript (Day I, p. 21, lines 11 - 16).

Additionally, Staff raised concerns over air in the pipes being a common problem at the system's high point; the existence of specific unacceptable water quality conditions; the extent and duration of outages; the absence of adequate alarms; and that no one with significant experience and background with water systems was

¹These issues were recounted by customers at the hearing who explained first hand the countless problems they have with their water reliability, service and quality.

involved with the daily operations or repairs of the system. The Company's failure to implement even a short term fix to the Hillside Drive pressure problem was an inadequate response to Staff concerns.

In Mr. Brogan's July 15, 1999 letter to the Company's President, Mr. Brogan also commented that given the change in character of the system from seasonal to one of higher demands and the unreliable nature of the supply from the lower system, a full engineering review of the system needs was required.

B. THE COMPANY

The Company asserted through cross examination of Mr. Brogan that both pressure and water quality problems on Hillside Drive could be the result of problems on customer premises, whether involving leaks or a clogged backflow preventer. It also suggested that pressure problems could be the result of leaks elsewhere in the system. Furthermore, the Company represented that only two of 212 customers faced problems.

C. CUSTOMERS

While no customers formally intervened, Hillside Drive customers offered comments as to the severity and extent of problems and consequences they have experienced in a number of areas, particularly relating to pressure, outages, water quality and air in the system. They represented that problems have existed for a number of years and that the Company has been, essentially, unresponsive to complaints. A customer in a separate part of the

system similarly noted problems with discoloration, particles in the water, air, low pressure and water hammer.

III. THE SETTLEMENT

Rather than continuing with the second day of hearings, Staff and the Company entered settlement negotiations. The Settlement was meant to be a comprehensive response to the deficiencies alleged by Staff within the system. The settlement was presented to the Commission on September 28th and reduced to writing and signed by Staff and the Company on October 29, 1999.

The Settlement calls for the Company to complete both substantive and ministerial items. For example, the Company is to install a pump station at the lower end of Hillside Drive to service the six lots on the street. A cost estimate and plan for installation was due on October 29, 1999. The Company was also to find and fix five leaks, provide Staff with a proposal on how emergency situations would be handled within the system, conduct an investigation into the purchase of the remaining water system from Lake Ossipee Village, Inc., conduct weekly visits to each pump station, rebate two years of bills to three customers, and create and maintain four waterproof maps of the entire system. The settlement also provides an opportunity for both the Company and Staff to provide supplemental comments regarding the need for an engineering study.

The Company was to work with the Department of

Environmental Services (DES) and Staff in its proposal for the pump station on Hillside Drive, submitting its proposal by October 29, 1999 and working to ensure the improvements to the Hillside Drive problem were in place within 30 days of final DES approval.

IV. ENGINEERING STUDY

On October 15, 1999 the Company submitted its opinion that an engineering study was not warranted given favorable comments in a DES Sanitary Survey of the system, that agency's past engineering approval, the production capabilities of the wells and the cost of the study.

Mr. Brogan filed comments on October 29, 1999 noting a number of deficiencies or potential deficiencies needing engineering review, including water quality concerns, actual well outputs, the ability of the lower system to supply the upper main diameters, leaks, air, alarms, backup power and continuing factors contributing to pressure deficiencies. Mr. Brogan also pointed out weaknesses in the Company's reliance on a once- every-three-year review and on historic design review by DES; conflicting and less than reliable information on well outputs; and an error in the Company's calculation of supply requirements. Finally, Mr. Brogan recommended a revised timeline of hiring an engineer by June 1, 2000, completion of a study by October 1, 2000, and quarterly reporting regarding the status of system improvements until the study is complete.

V. COMMISSION ANALYSIS

It is the duty of every public utility to furnish service to its customers in a reasonably safe, adequate, just and reasonable manner. See RSA 374:1. The evidence in the record shows that the Company was not operating in a manner consistent with this requirement and the public good. The customer statements regarding the pressure and air problems are disturbing. While we acknowledge the Company has also submitted customer letters and phone messages, as Exhibit 10, we also point out that it is within this Commission's discretion to accord particular weight to such evidence. In this instance we find the evidence from the five live witnesses to be more persuasive than the documentary evidence provided by the Company. Further, there is some evidence that the Company has attempted to deflect blame for system deficiencies onto the Hillside Drive customers who had complained of poor water quality. See Exhibit 3. The continued pattern of unresponsiveness by the Company raises serious questions about the Company's ability to provide safe and adequate service. However, it appears that the Company did attempt to negotiate and come to an agreement with Staff regarding the need for certain system improvements. For example, the Company located and fixed five leaks that had, until being required to show cause, gone undetected. The Company also agreed to have an individual involved in day-to-day operations certified as a system operator. Likewise, it agreed that if the proposed pump station did not resolve the air problem it would make a reasonable effort to

promptly install or implement an appropriate remedy on Hillside Drive. These efforts are worthy of Commission support. The Company also made a good faith gesture of providing rebates in the amount of two years worth of rates to three of its most severely affected customers.

These efforts, though commendable, are not sufficient to alleviate all of the Commission's concerns. The agreement calls for the Company to install a pump house capable of supplying ample water flow to all Hillside Drive residences when concurrently occupied. At the hearing on September 28, 1999 there was discussion relating to the timing of constructing the pump house. It was represented that once DES had given approval, the excavation would begin.² Based upon our review of recent correspondence, it appears that while DES has approved the pump station no construction has been undertaken. Customers, whether it be two or 200, cannot expect to continue to live with the service that is now being provided. We note that it has now been 12 weeks since a verbal stipulation was presented to the Commission; over five months since Staff's July 15, 1999 letter initially highlighted the severity of problems on Hillside Drive; and a number of years that customers have experienced inadequate service. Continuation of such a level of service is simply unacceptable. It now appears that further delay in implementation of an appropriate remedy is a significant

²Transcript, Day II, p. 38.

possibility that we cannot permit. Accordingly, LOV Water Company shall take steps to commence the construction of the pump station, the pressure remedy anticipated by the stipulation, upon receipt of this order and shall continue with all due haste and manpower such that the cause of the pressure problem be alleviated. We further require the Company to report weekly on progress toward implementation until complete. If the station is not operational and providing safe, adequate and reliable service to Hillside Drive customers by February 15, 2000, we will impose a fine of \$100 per day until that condition is satisfied. At the same time, however, we note the monetary cap alluded to in the Agreement, \$15,000, and the need to expend funds prudently.

We note that other outstanding issues to be resolved include the Company's emergency response capability and ownership of a part of the system by a separate entity, Lake Ossipee Village, Inc. We will require a report from Staff on these two areas by February 15, 2000.

Regarding the need for engineering review, we find Staff's arguments persuasive and will order that a study be done within the timeframes recommended. Both at the September 28, 1999 hearing and in his October 29, 1999 memorandum, Mr. Brogan addressed why he believed an engineering study was appropriate. His concerns over the age of the system and whether the lower system could supply

sufficient water to the upper system under all conditions³ are substantive concerns. The issues regarding which wells are active, the production level for those wells⁴, the adequacy of the storage, peak demands and the changing nature of the consumption⁵ are critical for determining quality of service issues.

It has become evident that a comprehensive plan to address system deficiencies has not been developed. Without a plan based on a professional assessment of the complete system and its operations, customers could continue to experience outages and other significant quality of service problems. The Sanitary Survey the Company refers to in its October 15, 1999 letter, completed by DES, was of such general nature as to be of limited value in meeting this need. In order to have an adequate knowledge of system operating characteristics, it is necessary to review the interrelationship of well yields, well and booster pump capacities, relative elevations, sizing and location of mains, system sectionalization, storage, production/consumption history, seasonal factors, system valving, blowoff locations, remaining life of system components, leak detection efforts, and water quality problems.

It should be noted that our concerns regarding the timing of construction on the pump station and the need for the engineering

³Transcript, Day II, p. 38.

⁴Id.

⁵Transcript, Day II, pp. 38-39.

study⁶ do not override our belief that the Agreement is in the best interest of the public. We simply believe that for all of the customers to receive adequate and reliable service the Company must endeavor to do more than it has in the recent past.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement be approved effective October 29, 1999; and it is

FURTHER ORDERED, that LOV Water Company complete installation of the pump station by February 15, 2000; and it is

FURTHER ORDERED, that weekly updates be provided to the Commission on the status of the construction of the pump station; and it is

FURTHER ORDERED, that the Staff of the Commission provide a report on the Emergency status situation of the Company and the ownership of the remaining portion of the system by February 15, 2000; and it is

FURTHER ORDERED, that LOV Water Company hire an engineer by June 1, 2000 and complete, by October 1, 2000, an evaluation of overall system status and deficiencies; and it is

FURTHER ORDERED, that the Company provide quarterly updates on completed and anticipated system improvements until the

⁶We addressed the engineering study issue in this order as it was left unresolved by the Agreement. Since all the evidence on the necessity of the study was before us, we believed it prudent to rule at this time.

engineering study is complete.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary