

DW 99-119

LOV WATER COMPANY

Deficiencies and the Appropriateness of Fines

Imposition of Fines

O R D E R    N O.    23,502

June 5, 2000

**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**

On August 23, 1999 the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,288 requiring the LOV Water Company (Company) to show cause as to why fines or penalties should not be imposed given significant quality of service deficiencies relating to pressure, water quality, air, system operation and engineering. A show cause hearing was scheduled for September 13, 1999. After a half of day of testimony, Staff of the Commission (Staff) and the Company entered into settlement discussions.

Staff and the Company reached a settlement agreement (Agreement) which was approved in Order No. 23,371. The Agreement called for the Company to implement changes to its system, including installation of a pump station at the lower end of Hillside Drive to service the six lots on the street.

This station was to alleviate the air and pressure problems on Hillside Drive. The Agreement also called for other administrative actions by the Company. A major point of the Agreement was the remedy to the Hillside Drive quality of service issues.

In Order No. 23,371 this Commission noted that the inadequate service was not acceptable and could not be tolerated. The Commission ordered that the 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.

The Company failed to meet the Commission's deadline, as the pump station was not operational until after April 15, 2000. On February 28, 2000 the Company submitted a status report to the Staff's Water Engineer indicating that station was not yet complete. The report noted, "the structure is up and we are waiting for our permitting and the weather to improve." The first indication, however, that the

pump station would not be completed by February 15, 2000 came on January 29, 2000, when the Company submitted a report indicating that weather was causing a delay.

As a result of not complying with Order No. 23,371, the Executive Director of the Commission notified the Company via letter dated March 1, 2000, that the Commission had determined to enforce the penalty against the Company. The March 1, 2000 Executive Director letter informed the Company that it was anticipated the project should be complete and operational by March 16, 2000 and that the fines would be implemented in the amount of \$3,000.00 for the delay from February 15 to March 16. The Company failed to produce a check in the amount of \$3,000 by March 16, 2000 as required by the March 1, 2000 letter. Moreover, the Company failed to produce the required weekly status reports or ask for an extension of time to complete the station.

On March 16, 2000, Attorney Fred Coolbroth entered his appearance on behalf of the Company and submitted a Motion for Hearing Regarding Fines and Penalties. A hearing was scheduled for April 3, 2000. The Company presented Messrs. David Sands and Art Tardie as witnesses at the hearing.

**II. POSITION OF THE PARTIES****A. COMPANY**

The Company argued that it was legally impossible for it to comply with the February 15, 2000 deadline because of permitting problems it had with the Town of Freedom. Additionally, the Company argued that it could not start building the pump station until after the issuance of Order No. 23,371 on December 20, 2000. The Company also contended that once the Order was received inclement weather set in which further delayed the completion of the project.

**B. STAFF**

Staff argued that the Company had sufficient time to complete the project and that the Company never asked for an extension of time to install the station. Staff countered the Company's argument that it had to wait for the issuance of Order 23,371 by showing that in early December the Company notified a customer that the pump system was going to be installed on the customer's property. Staff also pointed out that the Company could have notified Staff about potential permitting problems, as the Water Engineer specifically offered Staff's assistance in early November regarding issues dealing with permitting.

Staff contended that the Company failed to inform

the Commission about any permitting problems until after the February 15, 2000 deadline for installing the pump station. Staff also asserted that the Company had not complied with the Commission's order of supplying weekly status reports. Finally, Staff suggested the Commission seriously consider the possibility of receivership under RSA 374:47-a, as it was Staff's position that the Company had not been able to furnish service in a reasonably safe, adequate and just manner.

### **III. COMMISSION ANALYSIS**

It is well-recognized that this Commission is vested with important judicial powers over public utilities and that one such power is the assessment of penalties for violations of a Commission order. *Re Boston & Maine Corp.*, 109 NH 324 (1969). N.H. RSA 365:41 authorizes this Commission to impose a civil penalty, not to exceed \$25,000, on a public utility which fails, omits, or neglects to obey, observe or comply with any order of the Commission. Additionally, RSA 374:17 allows the Commission to impose a fine of \$100.00 per day on a utility which neglects or refuses to file any report or answer any question lawfully asked by the Commission.

After a hearing in which we heard from Mr. Sands it is apparent that the Company failed to comply with Order No. 23,371. Mr. Sands admitted that the Company had not filed the

required weekly reports with this Commission. While some reports were filed, the Company was not consistent in meeting its obligation. Moreover, on several occasions the generation of the report by the Company was prompted by our Staff.

The Company failed to have the pump station completed by February 15, 2000. The Company also failed to ask for an extension of time to complete the facility due to weather or other problems. One such "other problem" dealt with permitting. Mr. Sands indicated that he did not know he needed a Town permit for the pump station, as he had installed two previous pump houses without Town permission. It is understandable given past practice that Mr. Sands would not have gone to the Town. What, however, is not understandable is the fact that the Company knew that it had Town permitting problems at the end of January, 2000, yet failed to notify this Commission until after the February 15, 2000 deadline.

We have determined that it is proper to enforce the fine against the Company as we ordered we would in Order No. 23,371. The Company's lack of responsiveness to our Staff and the needs of its customers cannot be something we condone. Therefore, we will assess a civil penalty in the amount of \$7,300. We note, however, that the Company has provided weekly status reports since the April 3, 2000 hearing and has

otherwise been keeping our Staff informed about the Engineering Study we required the Company complete in our December 20, 2000 order. As a result, the Company will be required to pay \$3,000.00 immediately, with the remaining \$4,300.00 held in abeyance. As long as the Company continues to abide by outstanding Commission orders, rules and statutes and continues to provide safe and reliable service to its customers, we will continue to hold the remaining amount in abeyance.

We also believe that holding the remaining amount in abeyance will ensure that the Company continues to provide the type of service customers and this Commission expect. We will hold the \$4,300.00 in abeyance for one year from the date of this Order. We still believe, as we have previously stated, 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.

Thus, we expect the Company will comply with the remainder of Order 23,371 in a timely fashion. We will again stress that any outstanding reports or documents must be forwarded to our Executive Director in compliance with sections PUC 202.06 thru 202.10 of our rules.

**Based upon the foregoing, it is hereby**

**ORDERED,** that LOV Water Company pay a civil penalty in the amount of \$7,300, of which \$3,000 is due immediately, for failure to comply with this Commission's order of December 20, 1999.

**FURTHER ORDERED,** that civil penalty fine must be paid within five working days of the receipt of this order.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 2000.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Claire D. DiCicco  
Assistant Secretary