

DW 03-144

CONSOLIDATED WATER COMPANY, INC.

Investigation into

Quality of Service at the Birch Hill Water System

Order Approving Stipulation Agreement

O R D E R    N O.    24,266

January 16, 2004

**APPEARANCES:** Orr and Reno Professional Association by Douglas L. Patch, Esq. on behalf of Consolidated Water Company, Inc.; Town of Conway by Paul DegliAngeli, P.E. Town Engineer; and Marcia A.B. Thunberg, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On July 31, 2003, Staff (Staff) of the New Hampshire Public Utilities Commission (Commission) filed with the Commission a memorandum outlining concerns arising from consumer complaints at the Birch Hill water system in Conway, New Hampshire. The Birch Hill water system is owned and operated by Consolidated Water Company (Consolidated) of Moultonborough, New Hampshire. The Birch Hill system is comprised of three engineered sections: Birch Hill West; Birch Hill East; and Birch Hill East II. Altogether, the Birch Hill system serves approximately 200 customers. The Commission approved Consolidated's purchase of the Birch Hill water system in June 1996. *Integrated Water Systems, Inc.* 81 NH PUC 475 (1996).

In its memo, Staff stated it had received numerous customer complaints regarding service interruptions from 1999 to 2003. Many of these interruptions occurred for significant periods of time and during the same months each year. Hearing Transcript of December 10, 2003 ("12/10/03 Tr.") at 7 lines 19-23. Staff expressed its frustration with Consolidated's unresponsiveness and lack of commitment to addressing the recurring supply, storage, metering, and distribution system issues. Staff recommended the Commission open a proceeding to investigate Consolidated's operation of the Birch Hill system.

On August 7, 2003, the Commission issued an Order of Notice opening a proceeding to investigate Consolidated's ability to provide safe and adequate service to customers of the Birch Hill water system. The Order of Notice set a prehearing conference and technical session for September 2, 2003.

On August 28, 2003, Paul DegliAngeli, Town Engineer, petitioned to intervene on behalf of the Town of Conway. Mr. DegliAngeli stated he had been appointed by the Conway Board of Selectmen to represent the approximately 200 Birch Hill residents in this proceeding before the Commission.

On September 2, 2003, the Commission held a duly noticed prehearing conference and granted the Town of Conway's intervention request. The Staff, Town of Conway and Consolidated met in a technical session after the prehearing

conference and developed a proposed procedural schedule, which the Commission approved September 5, 2003.

On September 3, 2003, Martin and Roxanne Williams filed a written complaint indicating that Consolidated failed to return phone calls.

Staff, Consolidated and the Town of Conway (hereinafter the Staff and Parties) completed an expedited discovery schedule and on November 17, 2003, filed a Stipulation Agreement (Agreement) with the Commission. The Agreement was fully executed by Staff and Parties. Staff stated that the Agreement contained measures Consolidated would take to address service quality issues at the Birch Hill water system. Staff requested the Commission set a hearing date, at which time Staff and Parties could present the Agreement for the Commission's consideration and approval.

On November 25, 2003 the Commission set a hearing date of December 10, 2003. On December 10, 2003, the Commission held a duly noticed hearing and heard evidence regarding the Agreement. Hearing Exhibits 3 and 4 were reserved for an addendum to the Stipulation and for a report from the Town of Conway.

On December 16, 2003, Staff filed Hearing Exhibit 3, and clarified that the Agreement's provisions regarding penalties.

On January 6, 2004, the Town of Conway filed Hearing Exhibit 4, a report on the formation of a water district, with the Commission.

## **II. SUMMARY OF THE STIPULATION AGREEMENT**

Staff and Consolidated presented the terms of the Agreement at the hearing. The Town of Conway did not attend the hearing but deferred to Staff and Consolidated's presentation of the Agreement at hearing. The components of the Agreement are as follows:

### **A. General**

Consolidated is required to research certain operational aspects of the Birch Hill system so that Staff and the Parties will have a more thorough working knowledge of the water system's characteristics. Consolidated will: 1) determine how many pressure zones exist; 2) determine what specific settings control operation of a well pump and booster pump in the Birch Hill East II system; 3) quantify the pressure impacts; 4) determine the capacity of certain booster pumps and a certain main size; and 5) determine whether an interconnection exists between the Birch Hill West and Birch Hill East systems.

Consolidated will gather operational data as to how the three sections of the Birch Hill water system interact. Consolidated will install production meters at the system's eight wells and pressure recorders during specific conditions at

specific locations. Consolidated will report all data collected from these activities, including well production data, to the Commission.

**B. Red Ridge Lane**

Staff and Parties acknowledge the critical need to address low pressure problems at the top of Red Ridge Lane before the summer of 2004. To that end, Consolidated agrees:

- 1) to reconcile use of an existing active second well in the Birch Hill West section with the Department of Environmental Services (DES);
- 2) to investigate six possible solutions to the Red Ridge Lane pressure problems, report its findings to the Commission by January 21, 2004, and implement one of the solutions with Staff concurrence no later than May 15, 2004; and
- 3) to the extent further water outages persist in the Birch Hill West system, Consolidated will take corrective action such as adding storage.

**C. Conservation of Supply**

Consolidated agrees to initiate a water conservation program before summer of 2004 to conserve supply in the Birch Hill systems. Consolidated agrees to:

- 1) meter all customers no later than June 15, 2004;
- 2) institute odd/even water restrictions effective Memorial Day through Labor Day 2004;
- 3) work with Staff to provide adequate advance notice to customers on metering and conservation issues;
- 4) request a hearing for

implementation of a metered rate once meters are installed; and  
5) read meters and issue bills monthly during the summer.

**D. Procedural**

The Staff and Parties agree to conduct further discovery and technical sessions. Consolidated agrees to submit all quarterly totals of the metered consumption records through September 15, 2004, within 15 days of the end of each quarter or billing cycle.

Staff and the Parties agree not to pursue larger improvements involving additional supply, centralized storage, or water quality issues at this time. The intent of Staff and the Parties is to allow Consolidated to focus its efforts on implementing operational remedies by the summer of 2004.

Staff and the Parties agree to stipulated penalties in the amount of \$30 per day for each missed deadline. Consolidated may be relieved of penalties in the event of exceptional circumstances. This paragraph was clarified by Hearing Exhibit 3, making explicit that penalties would be collected without further Commission action and that in the event of a dispute as to whether exceptional circumstances existed that negated penalties, Consolidated may submit the dispute to the Commission for resolution.

The Staff and Parties also agree to three step adjustments to rates throughout 2004 to reflect recovery of capital expenditures called for by the Agreement.

**E. Water District**

Though not provided for in the Agreement, at Consolidated's request, the Town of Conway submitted details regarding formation of the Birch Hill Water District, as Exhibit 4. The Town of Conway established the Birch Hill Water District at a special meeting on December 10, 2003. The Town explained the water district formation was in response to "ongoing problems with the existing system and its operation." The water district was formed to potentially acquire the Birch Hill water system in the future. The water district would not be able to set a budget to study an acquisition until its annual meeting in 2004 and would not be in a position to acquire the Birch Hill water system, if it so chose, until 2005. Lastly, the Town requested that Consolidated comply with the Commission's service requirements and send copies of recently-filed documents to the Town.

**III. COMMISSION ANALYSIS**

Pursuant to RSA 374:1, every public utility is obligated to furnish safe and adequate service to its customers in a just and reasonable manner. At hearing, the Commission heard evidence of customer complaints in the Birch Hill water

system and that these complaints occurred over multiple years and during essentially the same months each year. 12/10/03 Tr. at 7 lines 19-23 and at 24 lines 2-4. Moreover, the record demonstrates that Consolidated has not been sufficiently responsive to the Consumer Affairs Division's efforts to resolve consumer complaints. Consolidated must take immediate corrective action to comply with RSA 374:1 and the duty to provide safe and adequate service.

At hearing, Staff testified that little information is known concerning how the Birch Hill system actually works. 12/10/03 Tr. at 12 lines 17-24. The Agreement thus requires Consolidated to identify the physical attributes of its system so that it can understand how the system functions. Knowledge of how the system operates is essential to effectively addressing customer water quality complaints. Consolidated cannot continue to operate the system on the basis of guesswork. The investigation called for is critical and will be approved.

To conserve supply, the Agreement requires Consolidated to install meters for all customers, in three phases, by June 15, 2004. Exh. 1 at 6. Staff testified that the Birch Hill water system experiences problems on peak consumption weekends such as Memorial Day, Fourth of July and Labor Day due to the influx of seasonal customers. 12/10/03 Tr. at 15 lines 20-21. We deem installation of meters to be



essential for ensuring that customers receive proper price signals based on their usage habits. Birch Hill presently bills on a flat rate and thus customers have no economic incentive to conserve water. Exh. 1 at 10. Metered service creates an economic incentive for customers to conserve water and promotes conservation more effectively than the present flat rates. We believe metering will likely reduce demand on the Birch Hill system; at a minimum, it will provide important data that Consolidated presently lacks.

The Agreement obligates Consolidated to implement a metered rate effective June 15, 2004. Exh. 1 at 6. This deadline coincides with final installation of all customer meters. We recognize the particular problems these deadlines present in setting an appropriate metered rate before the company has actual consumption data. The Agreement's accelerated schedule will necessitate consumption data based on estimates. We urge Consolidated to file its request for the metered rate as early in the year as possible to allow Staff an opportunity to thoroughly evaluate the available data and the requested rate.

Staff testified at hearing that the obligations contained in the Agreement are meant to correct some of the highest priority problems prior to the summer of 2004. Staff stated that Consolidated's engineering consultant, Woodard &

Curran, had recommended substantial improvements to the system but at a cost of approximately \$1.5 million. 12/10/03 Tr. at 22 line 5. Staff stated Woodard & Curran recommended all three pressure zones be combined into one gravity-fed system, with one centralized storage tank and new wells. 12/10/03 Tr. at 22 lines 16-24. Staff testified that Woodard & Curran's recommendations were too expensive for the company and would not bring relief to customers for this upcoming summer. 12/10/03 Tr. at 11 lines 1-7. The Agreement between Staff and the Parties allows affordable system improvements in time for this summer. We agree that immediate, affordable system improvements need to be made and that the Agreement is a reasonable compromise.

We agree with Staff and the Parties that the Agreement is a good first step in that it implements, on a timely basis, affordable system improvements which address the system deficiencies. We will continue to monitor Consolidated's ability to satisfy the obligations of RSA 374:1 and provide customers with safe and adequate water service in a just and reasonable manner.

We are aware that residents of the Town of Conway have formed a water district that may purchase the Birch Hill system. According to the Town of Conway's January 6, 2004 filing, however, the water district would not be in a position to

purchase the Birch Hill system until 2005, if in fact it intends to take this step. Consolidated must begin to address the system's deficiencies well before 2005. The possibility that the water district might acquire the Birch Hill system should not serve to delay addressing the deficiencies. Unless and until the water district actually acquires the water system and begins to provide service, Consolidated remains obligated to provide safe and adequate service within its franchise.

The Agreement provides for three step adjustments to Consolidated's rates over the course of 2004. We have used step adjustments in the past as a means of ensuring that a regulated utility retains its ability to earn a reasonable rate of return even after implementation of large capital projects. *Pennichuck Water Works, Inc.*, Order No. 23,923 (March 1, 2002). The Agreement requires Consolidated to install customer meters, well meters, pressure recorders, and consider a booster station, atmospheric tank or other storage, all before metered rates are implemented. Our general practice is to limit improvements to be included in step adjustments to those that are of an extraordinary nature which are in service and necessary for the provision of safe and adequate service. *Id.* at 13. We agree that these expenditures are extraordinary for Consolidated. We will thus approve the step adjustment mechanism contained in the

Agreement subject to our review and approval of each step adjustment request.

The Agreement also contains a self-executing stipulated penalty provision. In the event Consolidated fails to meet obligations under the Agreement, it will be liable for a \$30 per diem penalty. Consolidated testified at hearing that the \$30 penalty was a realistic penalty and that it agreed with the amount. 12/10/03 Tr. at 29 lines 7-8. We have approved settlement agreements in the past which contained stipulated penalties for failure to meet obligations. See e.g., *Northern Utilities, Inc.*, Order No. 24,075 (October 28, 2002). We find the modest penalty of \$30 per day is reasonable. If a penalty of this level fails to elicit compliance with the Agreement, we can resort to our fine authority under RSA 365:41 and RSA 365:42.

After reviewing the Agreement and considering the testimony presented at hearing, we find the Agreement is reasonable and approve it. We understand and acknowledge that an important objective of the Agreement is to ensure that affordable system improvements be made in time for the peak demands of the 2004 summer season. Acquiring additional information about the characteristics of the Birch Hill system is critical for an effective long-term approach to the problems of service reliability. We will continue to monitor

Consolidated's ability to comply with RSA 374:1 and require Consolidated to make necessary improvements for as long as they own and operate the system.

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

**ORDERED**, that the Agreement submitted by Consolidated, Staff and the Town of Conway, and Consolidated's obligations contained therein and specified above, is APPROVED.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 2004.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary