

DT 01-200

DIXVILLE TELEPHONE COMPANY

Investigation into Failures to File Annual Reports

Order Following Hearing

O R D E R N O. 23,895

January 11, 2002

APPEARANCES: Devine, Millimet & Branch, P.A. by Frederick J. Coolbroth, Esq. for Dixville Telephone Company and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

This docket concerns the failure of the Dixville Telephone Company (Dixville) to file its 1999 and 2000 annual reports on a timely basis with the New Hampshire Public Utilities Commission (Commission) as required by the applicable rule, Puc 407.10. *See also* RSA 374:15 (requiring every public utility to file "reports at such times . . . , and setting forth such statistics and facts, as may be required by the commission"). Pursuant to RSA 374:17, any public utility that does not file reports required by the Commission at the time specified by the Commission shall forfeit the sum of \$100 per day unless excused or granted an extension of time.

The Commission opened this docket by Order No. 23,801 (October 11, 2001), directing Dixville to show cause

why it should not be fined pursuant to RSA 374:17. Order No. 23,801 noted that Staff had granted Dixville numerous extensions with regard to the two reports in question, in light of extraordinary circumstances at the Company. Nevertheless, Dixville had not filed the two reports in question as of the date of the Order. Accordingly, the Order directed the Company to appear at hearing on October 29, 2001.

Dixville filed its 1999 annual report on October 18, 2001, more than a year and a half after the original due date of March 31, 2000. The Company appeared as directed on October 29, 2001.

At hearing, the Company indicated that it intended to submit the 2000 annual report before the end of 2001. Through counsel, Dixville indicated that it had been having a "difficult year." Counsel indicated that Dixville is a department of the Tillotson Corporation, which owns the land and buildings at The Balsams resort in Dixville Notch. Counsel further noted that the operator of the resort is a different entity which, nonetheless, had previously housed the bookkeeping department where Dixville's annual reports were prepared.

Counsel reported that one of the principals of The Balsams had recently died and that Neal Tillotson, a principal

of Tillotson Corporation, had recently died at the age of 102. According to counsel, these deaths had created particular difficulties at both companies. However, counsel noted that as a result of these circumstances the responsibility for preparing the Company's annual reports had been transferred from the bookkeeping department of The Balsams to the Tillotson Corporation's headquarters in Everett, Massachusetts. According to counsel, this change will make it possible to submit the annual reports on a complete and timely basis, beginning with the 2001 annual report due on March 31, 2002.

Staff indicated that the transfer of responsibility to Tillotson Corporation headquarters makes compliance more likely. With regard to sanctions for failure to file the 1999 and 2000 annual reports on a timely basis, Staff proposed two possible alternatives for the Commission's consideration: (1) impose a \$1,000 fine in connection with the 1999 filing and a \$500 fine with regard to the 2000 report, or (2) impose a \$1,000 fine but suspend it on the condition that Dixville submit any outstanding reports on a date agreed to by Staff and make its 2001 filing on or before the due date. Staff noted that this latter alternative was the one ordered in a similar proceeding in 1999. See Central Water Co., 84 NH PUC

577 (1999).

Dixville submitted its 2000 annual report on December 17, 2001.

II. COMMISSION ANALYSIS

As we noted in the *Central Water Company* case, and as we recently reiterated in a similar proceeding involving two water companies,

[t]he filing of an annual report each year is not a mere technicality or an arbitrary hoop through which each regulated utility must jump. It is an essential component of the rules the Commission has promulgated in the discharge of its statutory duty "to keep informed as to all public utilities in the state."

Riverside Water Works, Inc., Order No. 23,875 (December 21, 2001), slip op. at 5 (quoting *Central Water Co.*, 84 NH PUC at 578, and RSA 374:4). We noted in both those cases that we are aware of the particular challenges that confront small utilities, but that "it is imperative that we not allow the hurdles faced by these companies to hamstring effective oversight of their operations." *Id.*

We credit the Company's explanation of the circumstances that allowed it to fall into arrears on its annual reports as well as the significant change - transfer of responsibility for preparing the reports to the offices of the

Company's parent organization - that makes it more likely the situation will not recur. Given this reason for optimism about Dixville's future compliance with reporting requirements, and the fact that the two previously outstanding annual reports are now on file, we deem it appropriate to resolve this case in a manner consistent with the determinations made in the two decisions quoted *supra*.

In other words, in light of the seriousness with which we treat the failure to submit annual reports, we invoke our authority under RSA 374:17 to impose a fine of \$1,000 on the Company. However, because we credit the Company's explanation for why this previously chronic problem has not been solved, we will suspend the fine conditioned on the timely filing of the Company's 2002 annual report on or before March 31, 2002. We stress that the failure to meet this deadline will not only subject Dixville to this \$1,000 fine, which relates to the 1999 and 2000 reports, but may also expose the Company to additional sanctions under RSA 374:17 related to the tardiness of the 2001 submission.

Based upon the foregoing, it is hereby

ORDERED, pursuant to RSA 374:17, that Dixville Telephone Company shall forfeit the sum of \$1,000; and it is

FURTHER ORDERED, that this fine is suspended in its

entirety pending the filing of the Company's 2001 annual report on or before March 31, 2002, failing which the fine shall be payable in its entirety without further hearing.

By order of the Public Utilities Commission of New
Hampshire this eleventh day of January, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary