

DW 00-247

DANIELS LAKE WATER WORKS, INC.

**Investigation into Quality of Service and
Continued Operation as a Viable Public Utility**

**Order to Show Cause Why Authority to Operate
as a Public Utility Should Not Be Revoked
and/or Penalties Imposed**

O R D E R N O. 23,579

October 30, 2000

By law, whenever the New Hampshire Public Utilities Commission (Commission) determines that a regulated utility in New Hampshire is "failing to provide adequate and reasonable service to its customers" the Commission may place the utility in receivership and "direct its staff to take such temporary action as necessary to assure continued service" after notice and hearing. RSA 374:47-a. For the reasons that follow, the Commission has provisionally determined that Daniels Lake Water Works, Inc. (Daniels Lake or Company), which serves approximately 23 customers in the Town of Weare, is failing to provide adequate and reasonable service. Accordingly, the Commission has decided to open this docket for the purpose of conducting the requisite hearing prior to placing Daniels Lake in receivership and/or imposing fines or other appropriate penalties.

Much of the Commission's recent contact with Daniels

Lake has centered on efforts to cause the utility to file the Annual Report the Company is required to submit under the Commission's regulations and RSA 374:15. On October 29, 1999, the Commission entered Order No. 23,334, imposing fines against six New Hampshire water utilities for failure to file annual reports. Daniels Lake was among the six utilities cited in the order.

As noted in Order No. 23,334, as of October 29, 1999 Daniels Lake had not filed the 1998 annual report that was due on March 31, 1999; its 1996 and 1997 annual reports had recently been received and rejected as facially inadequate. The Commission also noted that Daniels Lake failed to appear at a scheduled hearing on September 21, 1999 to show cause why fines should not be imposed pursuant to RSA 374:17 (authorizing fines of \$100 for each day annual report remains unsubmitted). Accordingly, the Commission imposed a \$1,000 fine against Daniels Lake, suspended the fine, but ruled that it would be reimposed without further hearing in the event that either (1) the Company failed to file its 1998 Annual Report by November 15, 1999 or (2) that the Company failed to file its 1999 Annual Report by the statutory deadline of March 31, 2000. The Commission also ruled that, in the event Daniels Lake failed to file its 1998 Annual Report by November

14, 1999, it would forfeit without further hearing the sum of \$100 per day until the report was filed.

On January 20, 2000, the Commission Secretary wrote to Daniels Lake, noting that the Company's 1998 Annual Report had not been received as of that date, nor had the Company resubmitted its 1996 or 1997 Annual Reports. The letter noted that, pursuant to Order No. 23,334, Daniels Lake was therefore liable for fines in excess of \$7,500. The Secretary advised Daniels Lake that the fines would be abated if the Commission received the Company's 1996 Annual Report by February 9, 2000, and the Company's 1997, 1998 and 1999 Annual Reports by March 31, 2000.

Daniels Lake filed its 1996 Annual Report on February 7, 2000. The Commission has received no additional Annual Reports from the Company.

On August 10, 2000, the Commission's Secretary wrote to Daniels Lake, noting the Commission's non-receipt of the 1998 and 1999 Annual Reports. The August 10 letter noted that the fine against Daniels Lake in Docket No. 99-133 had been reinstated pursuant to Order No. 23,334, that the fine had reached \$26,900 as of July 31, 2000 and that Daniels Lake should remit that sum to the Commission within 14 days. To date, Daniels Lake has not paid any of the fine imposed under

Order No. 23,334.

As noted in Order No. 23,334, the requirement that each water utility under the jurisdiction of the Commission file a timely Annual Report is not a "mere technicality or an arbitrary hoop." Order No. 23,334 (October 29, 1999), slip op. at 5. Rather, "[i]t 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.'" *Id.*, quoting RSA 374:4.

Unfortunately, the Company's disregard of its Annual Report obligation, and the attendant fines it has amassed and continues to amass in connection with such disregard, is not the only current problem with this utility's operations.

The Commission granted Daniels Lake its utility franchise on October 24, 1995 (Order No. 21,875), approving temporary rates at the same time. At the hearing that preceded the issuance of Order No. 21,875, Daniels Lake president Josef Fitzgerald testified that his responsibilities were minimal, chiefly limited to providing billing and accounting (in consultation with the Company's attorney and accountant) and that Mr. Fitzgerald's father, Gary Fitzgerald, was the certified operator. The Commission noted that the elder Mr. Fitzgerald was a resident of Weare, was on call 24

hours per day and was available to respond to billing inquiries and complaints. Based on Commission Staff's testimony that the elder Mr. Fitzgerald possessed the necessary managerial and technical expertise, the Commission awarded the franchise and established temporary rates. Daniels Lake has never filed for permanent rates. On Sunday, October 22, 2000, Josef Fitzgerald telephoned the Commission and left a recorded message that the Company's certified operator has "apparently resigned as of last week" without informing him. Mr. Fitzgerald asked if the Commission could furnish him with the name of another certified operator who could "visit" the Company's well.

The condition of the Company's pump station is also of serious concern. As cited in both the Company's own State Revolving Loan Fund (SRF) application dated January 25, 1998 and the latest Department of Environmental Services (DES) Sanitary Survey (December 3, 1999), the pump station is in poor condition. According to the DES survey, the pump station "has become hazardous to enter and should be replaced with a new above grade pumphouse. . . . This current situation is unacceptable and must be addressed immediately." Although the Commission Staff believes that Daniels Lake may have replaced the pump station roof this year, the necessary major upgrade

work remains outstanding. Nevertheless, according to Staff, the Company has not followed through on obtaining low interest SRF funding for needed improvements.

Staff is further aware that Daniels Lake has failed to comply with the federal rules requiring that it test the water of some of its customers for lead and copper contamination and take remedial action if necessary, has failed to provide either of two federally mandated Consumer Confidence Reports, has repeatedly failed to return calls from customers, officials of DES and the Commission Staff, and did not bill customers and/or accept cash customer payments for a four month period from May to August 2000. With regard to the real property on which the Company's well is situated, Staff has been informed that no deed transferring title to the Company was ever recorded, thus raising questions about whether the Company actually holds title to the property. Further, according to Staff, the Company has a history of poor customer relations, has triggered repeated customer complaints of low water pressure and has not complied with its stated intention to meter the system by the end of 1998.

In light of these ongoing problems, critically affecting all aspects of the Company's operations, the Commission believes that Daniels Lake Water Works, Inc. may no

longer possess the requisite capability to operate as a public utility in New Hampshire. Therefore, the Commission concludes that a hearing should be held to permit the Commission to develop an adequate factual record to discharge its responsibilities and decide whether to place Daniels Lake in receivership, if necessary.

Based upon the foregoing, it is hereby

ORDERED, that, pursuant to RSA 365:41, RSA 365:42, RSA 374:17, RSA 374:28, RSA 374:47-a, Daniels Lake appear before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire at 10:00 a.m. on December 7, 2000 to respond to the deficiencies noted above, and to show cause why fines or other penalties should not be imposed, and why its authority to operate its water system in the Town of Weare should not be revoked and the utility placed in receivership; and it is

FURTHER ORDERED, that the Executive Director and Secretary send a copy of this Order to each of the Company's customers, the Weare Town Clerk and the New Hampshire Department of Environmental Services by first class U.S. mail, on or before November 6, 2000; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to Daniels Lake and

the Office of the Consumer Advocate on or before December 4, 2000, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before December 7, 2000.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary