

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PONDEROSA)	
TERRACE ESTATES WATER SYSTEM,)	CASE NO. PTE-W-03-1
INC.'S FAILURE TO COMPLY WITH)	
COMMISSION ORDERS.)	HEARING EXAMINER'S
<hr/>)	PROPOSED ORDER

On March 25, 2003 the Idaho Public Utilities Commission ("Commission") entered Order No. 29212, its Order to Show Cause and Notice of Hearing directed to Ponderosa Terrace Estates Water System, Inc. ("Ponderosa" or "Company"). The undersigned hearing examiner conducted the hearing on April 28, 2003 at the Bonner County Courthouse in Sandpoint, Idaho. Ponderosa was represented at the hearing by Mr. Robaer Cobott, president of Ponderosa. No attorney appeared on behalf of Ponderosa. Lisa Nordstrom, deputy Attorney General, represented Commission staff. At the hearing live testimony was presented by Michael Fuss, employed by the Commission as a staff engineer, and by Mr. Cobott on behalf of Ponderosa. Prefiled testimony of Mr. Fuss and Mr. Cobott was admitted as part of the record at the hearing. In addition, documentary evidence (Exhibits 1 through 21) attached to Mr. Fuss's prefiled testimony were admitted into the record as were two exhibits attached to Mr. Cobott's prefiled testimony (Exhibits 101 and 102).

BACKGROUND

The Commission in its Order to Show Cause finds that there is probable cause to believe that Ponderosa failed, omitted or neglected to obey, observe or comply with Commission orders, rules, and directions as required by Chapter 7 Title 61 of the Idaho Code.

More specifically, that Ponderosa:

1. Made material misrepresentations to customers regarding the Commission's involvement in regulating the Company;
2. Made material misrepresentations to customers regarding rates to be charged for seasonal disconnections;
3. Threatened to disconnect customers in a manner inconsistent with prior Commission Orders and administrative Rules; and
4. Billed customers for usage (or lack thereof) in a manner inconsistent with prior Commission Orders.

Order No. 29212 requires the Company to show cause why the Commission should not find that Ponderosa has failed to comply with Commission orders, rules, directions, and/or requirements. In addition, Ponderosa is ordered to show cause why the Commission should not: (1) seek a civil penalty of \$2,000 per day for each day the utility has failed to comply with Commission Orders pursuant to *Idaho Code* § 61-706; (2) petition the First Judicial District for an injunction prohibiting Ponderosa from charging rates different than those ordered by the Commission; (3) request the court place the Company in receivership; and/or (4) file criminal misdemeanor charges under *Idaho Code* § 61-709 for failure to comply with a Commission Order.

The Commission's Order to Show Cause requires that staff prefile testimony outlining Ponderosa's failure to comply with the Commission orders by April 1, 2003. In response to the order, staff filed the direct testimony of Michael Fuss on April 1, 2003.

The Commission's order requires that Ponderosa no later than

April 21, 2003, file testimony that explains:

1. Why the Commission should not seek imposition of civil and/or criminal penalties for non-compliance with Commission Orders;

2. Why the Commission's current rates are inadequate to recover Ponderosa's expenses; and

3. What rates Ponderosa believes should be implemented.

In response, Ponderosa filed "PUC Order to Show Cause to All Questions Talked About and Listed In This Document", received by the Commission on April 18, 2003, to which is attached two exhibits, a Water Distribution Industry Operator's Statement of Ponderosa (exhibit 101) and a copy of a letter from Mr. Cobott as president of Ponderosa to the Idaho State Tax Commission dated March 16, 2003 (exhibit 102).

SUMMARY OF THE EVIDENCE

A. TESTIMONY PRESENTED ON BEHALF OF STAFF

Michael Fuss testified concerning the history of Ponderosa and the orders of the Commission in its regulation of Ponderosa as a public utility and Ponderosa's non-compliance with those orders and disregard for the Commission's authority. Mr. Fuss also testified concerning Mr. Cobott's allegations that the Commission discriminates against his water company by not regulating all other for-profit water companies in the state. If such companies exist, Mr. Fuss is not aware of them. Staff investigates all companies for which it receives complaints. Mr. Fuss also outlined his efforts to try to work with Mr. Cobott to address issues raised by Mr. Cobott regarding rates, but that Mr. Fuss had great difficulty

in getting Mr. Cobott to respond. As to the allegations of Mr. Cobott concerning the Public Utility Commission's causing the Idaho State Tax Commission to assess the value of Ponderosa at \$130,000, such assessment apparently was performed prior to the Commission's order asserting jurisdiction over Ponderosa. Neither the Commission or staff caused the tax commission to assess the value of Ponderosa at this level.

Mr. Fuss testified that the rates proposed by Mr. Cobott may be the best proposal under all of the circumstances because of the propensity of consumers to drill their own water well if rates are too high. In his prefiled testimony Mr. Fuss proposes a rate structure which is different than that in the Commission's current order setting rates and is also different than that proposed by Mr. Cobott. Mr. Fuss believes that the rates of \$48.00 for resident landowners, (based on 12 resident landowners), and \$25.00 per month for non-resident landowners (based on there being 21 non-residents), and allowing delinquent customers to pay all delinquent bills, or possibly pay a \$2,500 hookup fee, to resume service would be a reasonable rate structure for Ponderosa. This rate structure would generate about \$13,200 per year, or a little over \$1,000 per month. If Ponderosa were to agree to staff's proposal then staff would recommend that the Commission adopt the agreed upon settlement as opposed to imposing civil or criminal judicial remedies upon Ponderosa.

B. TESTIMONY PRESENTED ON BEHALF OF PONDEROSA

In his prefiled testimony Mr. Cobott testifies that Ponderosa is being discriminated against by the Commission because the

Commission has failed to exercise its jurisdiction and regulation over other for-profit water companies in the state. Next, he contends that the Commission has violated its order of August 8, 2002 which had been represented to him by staff would not be changed. Ponderosa was operated under the August 8 order until Mr. Cobott was told by Michael Fuss that it was likely the Commission would change the order to allow part-time landowners within Ponderosa Terrace Estates to only pay for four months of water per year. Mr. Cobott believes he was deceived and that he had to take matters into his own hands to try to save the Company and his investment. By lowering rates to those customers he terms "non-resident owners" from that ordered by the Commission, Ponderosa has saved six consumers from leaving the system. Ponderosa currently has 12 full time "residents" and 21 "non-residents". If there are only two classes of customers, residents and non-residents, and if the residents are charged \$48.00 per month year around, and the non-residents are charged \$25.00 per month year around, then Ponderosa would receive revenues of \$1,101 per month or \$13,212 per year.

To make improvements to the water system as required by the Idaho Department of Environmental Quality, Mr. Cobott had to obtain a loan by refinancing his home and loaning the money to Ponderosa which was done just before the Commission exercised jurisdiction over Ponderosa. The Commission has informed Mr. Cobott that he could not recover the monies loaned to Ponderosa.

Mr. Cobott states that he was told by staff that Ponderosa would likely never make a profit and that it should be given to the

landowners. Even though the Commission says Ponderosa is worthless, the Idaho State Tax Commission has assessed the value of the Company at \$130,000 based upon information the Tax Commission received from the Public Utilities Commission. Ponderosa received a tax bill for \$1,254. Ponderosa does not have the money to pay this tax. Attached to Ponderosa's prefiled testimony is exhibit 101, a statement of income and expenses for Ponderosa which was sent to the Tax Commission, and exhibit 102, a letter dated March 16, 2003 in which Mr. Cobott states the assessment against Ponderosa is unjust and advises that Ponderosa requests both an extension of time and a tax reduction.

In its prefiled testimony Ponderosa attempts to issue its own order to show cause to the Commission in which he seeks (1) damages of \$300,000 for the injury caused to Ponderosa by the Commission, (2) \$50,000 from the staff and commissioners for "making fun and telling me that my business is worth nothing", (3) \$50,000 for the time spent furnishing information to the Commission, two trips to Boise, a hearing, and various meetings in Sandpoint, (4) \$3,000 for every day since the Commission issued its last order setting new rates for Ponderosa, (5) a requirement that the Commission furnish answers to questions and documents requested by him, (6) an objection to Michael Fuss because, as a staff employee of the Commission, his testimony is prejudicial, and (7) \$500,000 for being discriminated against. Mr. Cobott concludes by making various demands regarding the hearing to be conducted on these issues and questioning the right of the Commission to regulate Ponderosa.

At the hearing staff moved that items 1, 2, 3, 4 and 7 on page 3 of Ponderosa's prefiled testimony not be "spread upon the record" since those matters are not properly before the Commission. Mr. Cobott agreed. With the exception of items 1, 2, 3, 4, and 7, Ponderosa's prefiled testimony was made part of the record.

During his live testimony, Mr. Cobott stated there are approximately 82 lots capable of being served by the Company but there are only 12 resident and 21 non-resident customers at this time. There have been problems collecting fees in the past from customers. Resident customers cannot afford to pay high fees for water and though the Company would like to receive the \$26,600 a year authorized by the Commission, it is unrealistic to have rates which would generate that level of revenue. Mr. Cobott testified as to the revenue that he can realistically collect as being \$12,000 to \$13,000 a year and that he would be willing to operate the Company for \$13,000 a year. To charge more would mean more people would be putting in wells and disconnecting from Ponderosa. He is willing to operate the Company at that revenue level and believes he could do so through his personal participation in the maintenance and operation of the system. Mr. Cobott feels that the rules of the Commission concerning seasonal disconnection of customers jeopardizes the revenue that the Company needs to operate. Mr. Cobott proposes a different set of customer definitions from that of the Commission, that is, that there only be two classes of customers, "residents" who are owners that live on their property 12 months a year and "non-residents" who do not live on their property 12 months a year. For the residents, the

Company proposes \$48.00 per month and for non-residents \$25.00 per month. Mr. Cobott admits writing a letter telling customers if they didn't pay 12 months of the year that Ponderosa would take them off of the system and not let them back on. He did this because he was desperate and trying to save the system and his investment in it. He is convinced the Commission's rate schedule is unsound for Ponderosa. Mr. Cobott testified he did not get a copy of the Commission's order no. 29172 in December because he was absent from his home doing business in Seattle. He understood, however, that the Commission was changing rates because of conversations between Mr. Cobott and Michael Fuss. He told Mr. Fuss that he wasn't going to abide by the change and would just "let the chips fall where they may". He wrote his January 2, 2003 letter to consumers because he felt he was deceived by the Commission changing Ponderosa's rates and that by changing rates, consumers were leaving the system.

SETTLEMENT PROPOSAL

During a recess at the hearing, staff and Mr. Cobott entered into discussions to try to resolve some of the issues for the rate structure for Ponderosa. They were able to come to a mutual agreement which they intend to propose to the Commission in writing at a later date. They jointly placed the settlement on the record at the hearing. The proposal to the Commission is that:

(a) There be two classes of customers, resident and non-resident.

(b) The first class of customers are "residents" who will be assessed at a rate of \$48.00 per month. Residents are defined as

customers who receive water from the system and who live year-round in Ponderosa Terrace Estates.

(c) The second class of customers are "non-residents" and will pay \$25.00 per month every month. Non-resident customers are defined as customers who are not residents, that is customers who do not live on the land served by Ponderosa on a full-time basis and would include both customers who are served by Ponderosa and customers who could be served by Ponderosa but who are not presently connected to the system.

(d) Before a customer will be connected to the system, all delinquent bills owed to Ponderosa (commencing with those bills incurred after a date which is set in a future Commission order) must be paid, or the customer must pay \$2,500, whichever is less. Unpaid bills incurred since the Commission took jurisdiction in the fall of 2001 shall be paid at the rate authorized by the Commission at the time service was rendered. Unpaid bills incurred prior to the date the Commission took jurisdiction must be collected through non-Commission means. A reconnect fee of \$35.00 would be charged to customers who previously took service, but then were disconnected. This fee would be in addition to any delinquent bills the consumer would be required to pay prior to being reconnected.

(e) The Company shall abide by the Commission's rules that apply to Ponderosa customers and the rules that are applicable to all water utilities.

Mr. Cobott requested that late fees and interest be charged on overdue accounts, but staff did not agree to any sort of

recommendation about interest or late fees, although staff agreed to bring Ponderosa's request to the Commission's attention for its consideration.

Mr. Cobott and staff further agreed that staff would prepare a written settlement for Mr. Cobott's review and signature, and that the settlement would then be presented to the Commissions for its consideration.

PROPOSED FINDINGS

1. Ponderosa is a for-profit corporation which operates a water system which has the capability of providing service to approximately 82 lots primarily within the Ponderosa Terrace Estates subdivision located south of Sandpoint and east of Sagle in Bonner County, Idaho. The Company delivers water through a looped unmetered system from two supply wells which produce a combined capacity of 25 gallons per minute.

2. Robaer Cobott and his wife Zaderea Raphael own the stock in Ponderosa. Ponderosa owns the piping, wells and 10,000 gallons of storage. Robaer Cobott is president of Ponderosa.

3. On May 30, 2001, Ponderosa gave notice to its customers of a significant rate increase. Several of Ponderosa's customers complained to the Commission. As a result of those complaints, an investigation was conducted by Commission staff.

4. On September 13, 2001, the Commission issued Order No. 28845 in which it finds Ponderosa is operating in such a manner as to fall within the Commission's jurisdiction. The Commission ordered Ponderosa to file an application for a certificate of public convenience and necessity and to propose rate schedules with

supporting documentation.

5. Mr. Cobott sent a letter to customers of the Company dated December 30, 2001 in which he states he plans to convert Ponderosa from a privately owned water system to a water association that would be owned and operated by the landowners in Ponderosa Terrace Estates. The purpose of this proposal was to avoid being regulated by the Commission. Mr. Cobott did not follow through on this announced conversion.

6. The Company did not file the required rate schedules or otherwise respond to Order No. 28845 and as a result on November 28, 2001 the Commission established a \$20.00 per month flat-rate charge for residential customer water usage effective December 1, 2001 in Order No. 28903. The Company is prohibited from assessing any other fees or charges without first providing justification for such charges or fees and obtaining the approval of the Commission for new tariffs.

7. Ponderosa was sent notice allowing it the opportunity to respond to the rates set by the Commission at a show cause hearing scheduled for December 17, 2001 in Sandpoint, Idaho. In Order No. 28911, the Commission requires the Company and Mr. Cobott to show cause (1) why the \$20.00 per month flat-rate residential water rate charge established in Order No. 28903 is not reasonable and should not continue and (2) why the Company should not be required to refund or credit customers the difference billed or received since the date of the Commission Order No. 28845. The hearing was vacated on December 14, 2001 because there was an indication that Mr. Cobott had not received notice of the show cause hearing.

8. On January 4, 2002 Scott D. Woodbury, deputy attorney general for the state of Idaho sent Mr. Cobott a letter notifying Mr. Cobott that the orders of the Commission, including the approved rates, were law until changed by the Commission and that Mr. Cobott's continued failure to comply with Commission orders would result in a complaint being filed against him in district court. Mr. Woodbury also advised Mr. Cobott of the civil and criminal provisions which could be exacted against him or Ponderosa as provided in *Idaho Code* §§ 61-706, 61-707, and 61-709.

9. Mr. Cobott sent a letter to the landowners served by Ponderosa dated May 1, 2002 stating that Ponderosa would discontinue doing business as a public water system on May 5, 2002, and that he was going to start a privately owned water system on May 10, 2002 called the Ponderosa Terrace Estates Privately Owned Water System, Inc. In a follow up letter dated May 4, 2002, Mr. Cobott informed Ponderosa customers that the proposed privately-held water company would be comprised of 300 shares owned by Mr. Cobott and his wife and that there would be a maximum of 100 shares available for purchase by the remaining landowners. Mr. Cobott did not follow through with this conversion.

10. The Commission received a letter from Ponderosa dated May 6, 2002 which states "Ponderosa Terrace Estates Water System, Inc. is going to have to go out of business because of the water rates imposed on this company by Idaho Public Utilities Commission."

11. In May, 2002 the Commission received communications from several customers who were concerned that the Company was not billing them. These customers indicated they would not make

payments unless they received a bill. During a telephone conversation, Mr. Cobott advised staff that he had not, and would not, mail bills to customers with the \$20.00 per month charge approved by the Commission since Mr. Cobott did not agree with that rate.

12. Staff filed a Decision Memorandum on May 10, 2002 that set out the Company's financial situation and recommend a rate increase. The Commission issued Order No. 29024 on May 14, 2002 that solicits written comments and gives notice of a proposed increase in rates.

13. On June 6, 2002 the Commission entered Order No. 29046 in which it adopts interim rates of \$56.50 per month for full-time and part-time customers, and charge active service, inactive service and former customers \$6.50 per month effective June 1, 2002. The order also sets a public hearing for June 20, 2002 in Sandpoint.

14. The Commission conducted both a public hearing and technical hearing on June 20, 2002. Based upon the testimony and evidence received by the Commission, the Commission set an annual revenue requirement for Ponderosa in the amount of \$26,604 on August 8, 2002 in Order No. 29086. The Commission authorized Ponderosa to collect monthly rates in the amount of \$48.00 for full-time and part-time customers, and \$25.00 for active service customers. Customers who do not have above ground access to water were not to be charged for service.

15. On September 25, 2002 the Commission entered its Order No. 29123 in which it denies a petition for reconsideration filed by Mr. Lyle Peterson and a cross-petition filed by Ponderosa. The

Order also requires that Ponderosa and Commission staff submit a report to the Commission no later than November 25, 2002 detailing charges to the number of customers in each class and the impact these changes would have on Ponderosa's revenues.

16. In Order No. 29172 issued December 20, 2002 the Commission authorizes Ponderosa to involuntarily move a customer to the inactive service customer class if the customer remains disconnected from the system for longer than eight full months, and, if the customer later seeks to resume service after the eight months has passed, the Commission directs Ponderosa to retain the following information to justify imposition of a \$2,500 hookup fee: (a) its customer payment and disconnection records, and (b) proof that notice of Ponderosa's intent to move the customer to inactive service and require a \$2,500 hookup fee upon reconnection was sent via certified mail.

17. Ponderosa sent a letter to its customers dated January 2, 2003 in which Mr. Cobott advises customers that "the Ponderosa Terrace Estates Water System, Inc. is no longer going to be involved with the Idaho Public Utilities Commission." In the letter, Mr. Cobott writes that "since PUC has been involved in my water system I have lost many customers" who have drilled wells or withdrawn from the system. Mr. Cobott states that the PUC has reduced Ponderosa's annual revenues by \$9,200 from the \$26,600 the Commission authorized in revenue requirement, and that the Commission's decision to allow part-time and active service customers to pay for just a four month minimum of water reduces the Company's revenue by \$6,400 and that the Company's annual revenue

is, therefore, less than \$10,000. Mr. Cobott tells Ponderosa's customers that effective January 1, 2003 only two customer classes, residential and non-residential, will exist as was the case before the PUC got involved. Mr. Cobott advises his customers who live on their property all year are resident customers and will pay \$48.00 a month and all others would be non-resident customers and will pay \$25.00 per month. Mr. Cobott further states that customers who were not currently making water payments 30 days from the date of the letter to decide whether to be part of the system or "be withdrawn from any further use from this system."

18. The statements contained in Mr. Cobott's letter deviate from the requirements of the Commission as set forth in their Order No. 29172 and from Order No. 29086 by requiring payments from customers that do not have above ground access to water.

19. Ponderosa followed through on making monthly charges to at least one consumer of Ponderosa even though the customer had been seasonally disconnected. The consumer was billed by the Company during a month in which the consumer did not use water from the system.

20. After learning of this violation staff sent a letter to Mr. Cobott on January 23, 2003 advising that Ponderosa's charges were contrary to the Commission's orders but that the alternate rates Ponderosa was charging might have some merit. Staff invited Mr. Cobott to assist staff in evaluating the rate structure by gathering information staff could use to file an updated report with the Commission. Mr. Cobott did not reply to this request.

21. Mr. Cobott was aware of the Commission's orders, rules,

and rates when he imposed, or attempted to impose, differing rates and rules upon the consumers of Ponderosa.

22. Ponderosa, by and through Mr. Cobott, has made material misrepresentations to customers regarding the Commission's involvement in regulating the Company.

23. Ponderosa, through Mr. Cobott, has made material misrepresentations to customers regarding rates to be charged for seasonal disconnections.

24. Ponderosa, through Mr. Cobott, has threatened to disconnect customers in a manner inconsistent with Commission orders and administrative rules.

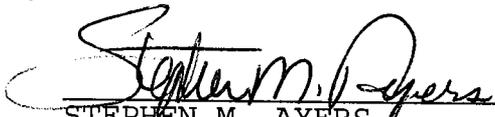
25. Ponderosa, through Mr. Cobott, has billed customers in a manner inconsistent with prior Commission orders.

PROPOSED ORDER

The hearing examiner recommends that the Commission enter an order adopting the provisions of the settlement when it is reduced to writing by staff, signed by Mr. Cobott on behalf of Ponderosa, and presented to the Commission. While Mr. Cobott has been defiant, unresponsive and uncooperative in the past, he seems sincere in his statements made at the hearing that Ponderosa will comply with the provisions of the settlement rates and connect fees should they be adopted by the Commission. He further seems sincere in seeking to resolve differences with the Commission through negotiations and cooperation in the future. Though the Commission could now seek the penalties and sanctions against Ponderosa set forth in *Idaho Code* § 61-701 et seq., it appears that Ponderosa's customers and the public's interest would be best served by

ordering amendments to the rates and connect provisions for Ponderosa in line with the settlement. If, however, Mr. Cobott fails to sign the settlement proposed on behalf of Ponderosa, the hearing examiner recommends that the Commission request that the attorney general, or the prosecuting attorney of Bonner County, bring an action in district court against Ponderosa Terrace Estates Water System, Inc. and Robaer Cobott for violation of Commission orders pursuant to the provisions found in Title 61, Chapter 7, Idaho Code.

DATED this 3rd day of June, 2003.


STEPHEN M. AYERS
Hearing Examiner